

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

**FILED**  
5 O'Clock **P.M.**

JUL 13 2011 ✓

THE STATE OF ARIZONA )

Plaintiff, )

vs. )

STEVEN CARROLL DEMOCKER )

Defendant. )

SANDRA K MARKHAM, Clerk  
By: ~~Karen Wilkes~~

No. P1300CR2008-1339

BEFORE:

THE HONORABLE WARREN R. DARROW  
JUDGE PRO TEMPORE OF THE SUPERIOR COURT  
DIVISION SIX  
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA  
TUESDAY, SEPTEMBER 14, 2010

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

KATHY JOHNSTON, RPR  
Certified Reporter  
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A P P E A R A N C E S

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## P R O C E E D I N G S

THE COURT: Thank you. Please be seated.

The record will show the presence of  
defendant, Ms. Chapman, Mr. Sears for the defense;  
Mr. Butner, Mr. Paupore for the State; and the jury has  
returned as well.

Mr. Butner, you may call your next witness.

MR. BUTNER: Judge, I'd call Eric Gilkerson to  
the stand, please.

THE COURT: Okay. Sir, if you would please  
proceed where the bailiff is indicating and then raise your  
right hand and be sworn.

ERIC GILKERSON,  
called as a witness herein, having been first duly sworn, was  
examined and testified as follows:

THE COURT: Please be seated here at the  
witness stand.

Sir, would you please begin by stating and  
spelling your full name.

THE WITNESS: Yes. My name is Eric. First  
name is spelled E-R-I-C. Last name is Gilkerson spelled  
G-I-L-K-E-R-S-O-N.

1 THE COURT: Thank you.

2 Mr. Butner.

3 MR. BUTNER: Thank you, Judge.

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. BUTNER:

7 Q. Mr. Gilkerson, what is your present occupation,  
8 sir?

9 A. I'm a forensic examiner.

10 Q. And for whom do you work as a forensic examiner?

11 A. The Federal Bureau of Investigation.

12 Q. And how long have you worked at the FBI, the  
13 Federal Bureau of Investigation, as a forensic examiner?

14 A. For about 11 years.

15 Q. And is that the entire time that you have been  
16 working for the FBI?

17 A. I've been working for the FBI for a total of about  
18 13 years.

19 Q. Okay. 11 years as a forensic examiner, and what  
20 were the other two years doing?

21 A. I was in training. I was in a training period, and  
22 also I was what we call a document analyst.

23 Q. Would you tell us what your education is that  
24 prepared you for your occupation as a forensic examiner for  
25 the FBI?

1       A.     I have a bachelor of science degree in biochemistry  
2 from the University of Maryland.

3       Q.     And when did you graduate from the University of  
4 Maryland with your degree in biochemistry?

5       A.     1992.

6       Q.     Okay. And upon graduation, where did you go?

7       A..    I worked in several different places as a chemist.

8       Q.     How long did you work as a chemist?

9       A.     For a few years until I was hired by the FBI in  
10 1997.

11      Q.     So approximately five years as a chemist; is that  
12 correct?

13      A.     Yes.

14      Q.     And that was in private industry?

15      A.     Yes, that's correct.

16      Q.     And then did you have any special type of training  
17 that prepared you to perform your duties as a forensic  
18 examiner?

19      A.     Yes, I did.

20      Q.     Would you describe for us what that training was,  
21 please.

22      A.     Sure. I did casting and lifting. Photography  
23 exercises. I worked cases under the supervision of other  
24 certified footwear and tire tread examiners. I went to  
25 manufacturing companies to take some tours. And I also went

1 to -- to professional conferences as well.

2 Q. Okay. And how much of this training that you had  
3 with the FBI before you became a forensic examiner, how much  
4 of that was internal training with the FBI?

5 A. Most of my training was done internally with the  
6 FBI, but going to professional meetings and taking tours of  
7 manufacturing facilities, things like that were obviously  
8 done outside of the FBI.

9 Q. What was the purpose of touring manufacturing  
10 facilities?

11 A. To see how shoes are made in general.

12 Q. Okay. And did you have any special training as a  
13 forensic -- a specialized forensic examiner's course  
14 someplace else besides the FBI?

15 A. No. My forensic examiner training was done at the  
16 FBI laboratory.

17 Q. Okay. Did you ever train in any other countries in  
18 terms of forensic examining -- examining?

19 A. No, I didn't train in other countries.

20 Q. Did you attend conferences in other countries?

21 A. Yes, I've trained -- I have attended training in  
22 other countries.

23 Q. What training have you attended in other countries?

24 A. I trained -- I attended a barefoot seminar with  
25 barefoot impression evidence in Canada.

1 Q. And are you a member of any professional  
2 organizations or associations?

3 A. Yes, I'm a member of the International Association  
4 for Identification, or the IAI as they call it.

5 Q. Okay. And what is the function of the  
6 International Association for Identification?

7 A. It's where other examiners, latent print examiners,  
8 shoe print and tire track examiners, other impression-type  
9 examiners meet, share ideas, prepare workshops and trainings  
10 to fellow examiners.

11 Q. All right. And does this organization engage in  
12 any type of peer review of the work of other members of the  
13 association?

14 A. They have a journal that members publish journal  
15 articles in, yes.

16 Q. And have you been involved in the publication of  
17 any journal articles?

18 A. No, I haven't written any journal articles.

19 Q. And have you testified as an expert witness  
20 concerning shoe print -- shoe print impressions?

21 A. Yes, I have.

22 Q. On how many occasions have you testified as an  
23 expert witness concerning shoe print impressions?

24 A. Approximately two dozen times.

25 Q. And would you describe for us where you have



1 testified as an expert witness?

2 A. In federal and state courts in different states  
3 throughout the United States.

4 Q. Would you outline for us some of the courts in  
5 which you have testified, please?

6 A. Yes. I've testified in courts in New Jersey,  
7 California, Florida, Alabama, Pennsylvania. Those are some  
8 examples.

9 Q. Were those all federal courts that you just  
10 described?

11 A. No. They were both federal and state.

12 Q. And are those courts of general jurisdiction that  
13 you've described?

14 A. I'm sorry, I don't think I understand that  
15 question.

16 Q. Okay. For example, the California court in which  
17 you testified, what court --

18 A. Yes.

19 Q. -- was that, please?

20 A. It was a federal court.

21 Q. All right. And have you testified in any state  
22 courts in California?

23 A. No.

24 Q. How about in Florida?

25 A. Yes.

1 Q. What court or courts have you testified in in  
2 Florida?

3 A. Hillsborough County.

4 Q. Okay. And is that the Hillsborough County Superior  
5 Court or District Court?

6 A. I'm not sure which one it was.

7 Q. Okay. How about in Alabama? What court did you  
8 testify in in Alabama?

9 A. That was a federal court.

10 Q. Okay. And then in Pennsylvania?

11 A. It was a state court.

12 Q. Okay. Have you been -- have you testified in any  
13 special hearings called Daubert hearings to qualify you as an  
14 expert witness in federal courts?

15 A. Yes, I have.

16 Q. On how many occasions have you testified in a  
17 Daubert hearing?

18 A. Twice.

19 Q. Would you tell us the cases in which you testified?

20 A. One was in the Calvin Ford case. The United States  
21 versus Calvin Ford is an example of one.

22 Q. And what state was that in?

23 A. That was in the state of New Jersey.

24 Q. Okay. And in a Daubert hearing, was your  
25 understanding the purpose of that hearing to be qualified as

1 an expert to testify in that particular case?

2 A. Yes.

3 Q. And was there a published court opinion that arose  
4 from that particular case?

5 A. Yes, there was.

6 Q. And did you go through a hearing in this case, in  
7 the case of --

8 MR. SEARS: Relevance objection, your Honor.

9 THE COURT: Sustained.

10 MR. SEARS: Thank you.

11 BY MR. BUTNER:

12 Q. Have you been qualified as an expert witness in the  
13 state of Arizona in the Yavapai County Superior Court?

14 MR. SEARS: Arizona has no such qualification  
15 process, your Honor. Objection to relevance.

16 THE COURT: Sustained.

17 BY MR. BUTNER:

18 Q. Okay. Mr. Gilkerson, would you describe for us  
19 whether you have testified in the Yavapai County Superior  
20 Court before?

21 A. Yes, I have.

22 Q. On how many previous occasions?

23 A. Once.

24 Q. Okay. Was that in connection with this case?

25 MR. SEARS: Your Honor, objection. May we

1 approach, your Honor?

2 THE COURT: Sustained.

3 MR. SEARS: I move to strike his answer, your  
4 Honor.

5 THE COURT: Sustained. The last answer is  
6 stricken.

7 BY MR. BUTNER:

8 Q. Okay. Mr. Gilkerson, would you describe for us how  
9 you came to be involved in the case of State of Arizona vs.  
10 Steven Carroll DeMocker?

11 A. Yes. Our Flagstaff office submitted a CD with  
12 images on it, and that case was assigned to me.

13 Q. When you say images, were these photographic  
14 images?

15 A. Yes. They were images of shoe impressions from a  
16 crime scene.

17 Q. And who was your contact person with the Yavapai  
18 County Sheriff's Office?

19 A. Detective McDormett.

20 Q. And would you describe for us, please, the -- the  
21 work that you did so to speak in preparation for giving your  
22 opinion in this particular case.

23 MR. SEARS: Calls for a narrative.

24 THE COURT: Overruled.

25 THE WITNESS: I was initially sent in a CD

1 with images that had some shoe impressions and soil and I was  
2 asked to determine what make and model shoe could have left  
3 those impressions. I conducted that database search based on  
4 about 20 images that had sufficient detail for me to work  
5 with.

6 BY MR. BUTNER:

7 Q. Okay. Mr. Gilkerson, how many images were you  
8 provided, if you know?

9 A. At least 40 or 50.

10 Q. And these were photographic images; right?

11 A. They were digital images on a CD.

12 Q. Okay. Would it be fair to call them digital  
13 photographs?

14 A. Yes.

15 Q. Okay. And what was your understanding as to where  
16 these digital photographs came from; that is, where were the  
17 photographs taken?

18 A. They were taken at a crime scene.

19 Q. And would you describe for us how you conducted  
20 your investigation concerning those photographs?

21 A. Initially, I reviewed the images to see which ones  
22 had sufficient detail for me to conduct a database search.

23 Q. Okay. And how many of those images did you feel  
24 were appropriate for your database search?

25 A. About 20.

1 Q. Okay. And what did you do with those 20 images  
2 then?

3 A. I took notes on the geometric shapes that made up  
4 the crime scene impressions and I used those as search  
5 parameters entered into our database.

6 Q. Okay. In taking notes on these geometric shapes,  
7 what shapes did you note were present in these images from  
8 the crime scene?

9 A. Some of the shapes looked like what I would  
10 describe as an arrow. Others looked like a bar with maybe a  
11 circular-type of shape on the top. Still others had what I  
12 referred to as a stair or a step-type design. And I used all  
13 those as search parameters.

14 Q. I want to show you what has been admitted into  
15 evidence first of all as Exhibit Number 2451 and ask you to  
16 take a look at this particular exhibit. Do you recognize  
17 that particular Exhibit 2451?

18 A. Yes, I do.

19 Q. How is it that you recognize that exhibit?

20 A. It appears to be an impression that I examined in  
21 this case.

22 Q. And examining that impression, did you note the  
23 various shapes that you had just described in that particular  
24 impression?

25 A. Yes, I did.

1       Q.     I'm going to put that impression on the overhead or  
2 I should say the photograph of that impression on the  
3 overhead and this is again Exhibit for the record 2451.  
4 Okay.

5               Now, you have the laser pointer right there in  
6 front of you, that black cigar-like object there.

7               You indicated that you saw various shapes in  
8 the photographic images that you were provided. And starting  
9 with the arrow shape, is that present in this particular  
10 photograph?

11       A.     Yes, it is.

12       Q.     Could you point that out for us and the members of  
13 the jury?

14       A.     It's right here in the heel area.

15       Q.     Okay. And then you mentioned that there was a bar  
16 shape present in the shoe impressions that were depicted in  
17 the photographs you were provided. Can you see a bar -- the  
18 bar impression in this particular photograph?

19       A.     No, not in this particular impression.

20       Q.     Okay. How about the -- I think you said there was  
21 a circular type of shape. Is that present in this particular  
22 photograph?

23       A.     No, I did not observe it in this particular  
24 impression.

25       Q.     Did you look at photographs designated as image

1 number 5509 now admitted into evidence as Exhibit 2501? Did  
2 you look at a photographic image 5509 for your research?

3 A. Could I see the image?

4 Q. Yes. Let me show you what's admitted into evidence  
5 as Exhibit 2501.

6 A. Yes, I examined this.

7 Q. Okay. And are the bars visible on that particular  
8 photograph?

9 A. Yes, they are.

10 Q. Okay. I'm going to put that on the overhead then  
11 at this time. For the record, I'm putting Exhibit 2501 on  
12 the overhead projector at this time. Using your laser  
13 pointer, would you point to the bar images that you saw  
14 depicted on this particular image.

15 A. There's a bar here almost a circular-type element  
16 to it on the top. This would be in the toe area.

17 Q. Okay. And then is the arrow-type shape also  
18 depicted in this particular photograph?

19 A. Down in the heel area down here.

20 Q. Okay. There's some oblique lighting in this  
21 photograph; correct?

22 A. Yes.

23 Q. Does that help outline the images somewhat better?

24 A. The image -- the images are somewhat hard to see,  
25 but the lighting does skim across the surface in some areas.



1 Q. Okay. And when you say you -- you used a database  
2 of some sort, would you describe what database you've used  
3 for this process?

4 A. We have two databases that we use. We have a  
5 system called SICAR, and that's spelled S-I-C-A-R. And  
6 that's a system that's made by Foster and Freeman and it's  
7 commercially available and predominantly law enforcement  
8 agencies buy that software. I searched the pattern through  
9 that database, but could not find any shoe in there that  
10 could have made the impression.

11 Q. Okay.

12 A. I then looked through a second database that we  
13 have that's an internal database that was computerized in the  
14 early 1990s and we used it up until about the year 2008. And  
15 I searched through that database as well, and I found a shoe  
16 in there -- in that database, our internal database, that  
17 could have made this impression.

18 Q. Now, when you say an internal database, does that  
19 mean it's a database internal to the FBI laboratory?

20 A. Yes. It means that we only use it internally.  
21 Agencies would submit impressions from crime scenes and ask  
22 us to search them for them. They did not have the ability to  
23 search it themselves.

24 Q. So this is the FBI's own database?

25 A. Yes, that's correct.

1 Q. And is that what you were asked to do in this case,  
2 in fact, was to search the FBI's database if possible to see  
3 if you could find a shoe or shoes that were comparable to  
4 these impressions?

5 A. Yes.

6 Q. Okay. Let me show you what's been admitted into  
7 evidence as Exhibit Number 2513. This is image number 5524.  
8 Do you recognize that particular photographic image?

9 A. Yes, I do.

10 Q. How is it that you recognize that?

11 A. It's an image that I examined in this case.

12 Q. And what did you find significant about that  
13 particular image?

14 A. In this particular image, there were arrows in the  
15 heel area and there were also that stairstep or stair-type  
16 design that I alluded to earlier and there was also that line  
17 with the slight curve or circle on the top present in the toe  
18 area.

19 Q. Okay. I'm going to place this particular  
20 photograph, Exhibit Number 2513, on the ELMO. Okay. Would  
21 you point to the arrow-type shapes that you noted to be  
22 present in this particular photographic image?

23 A. Can I step down to get a better look?

24 Q. Sure.

25 A. I'm having a hard time seeing it from this angle.

1 Q. Sure.

2 THE COURT: Sir, please watch your step there.

3 THE WITNESS: Thank you.

4 In the heel area, there is an arrow right  
5 here, and right below it is another arrow here.

6 BY MR. BUTNER:

7 Q. Okay. And then did you find any bars with  
8 accompanying circles depicted in this particular photographic  
9 image?

10 A. Yes, I did. They're up in the toe, but it's hard  
11 for me to see them on the screen.

12 Q. Let me show you Exhibit 2513 for the record.

13 A. It's right here where my finger is. And you can  
14 see it somewhat right here.

15 Q. It's just sort of a shadow on the overhead picture;  
16 is that correct?

17 A. Yes, that's correct.

18 Q. Okay. Would you point it out again where you  
19 showed it to the jury?

20 A. Right here.

21 Q. Okay. That's a bar with kind of a circle on the  
22 front part of it?

23 A. Yes. There's the bar here and then there's a  
24 circle-type shape at the top here.

25 Q. Okay. And that was on -- you were showing them

1 what was depicted in Exhibit 2501; right?

2 A. Yes. That's the same shape right here.

3 Q. Okay.

4 A. Again, in the toe area.

5 Q. Okay. You can resume the stand. Thank you.

6 So after noting the presence of those various  
7 shapes, the arrow, and the bar, and the circular shape, what  
8 step in the process did you go to at that point?

9 A. After I made my observations, I entered them in  
10 both the databases as search parameters and then I queried  
11 the system to see what kind of shoes came back as shoes that  
12 potentially could have made that impression.

13 Q. And after querying the system as you put it, did  
14 you go through and look at those various types of shoes?

15 A. Yes. There was a group of shoes that came back and  
16 what I would call a hit list and I scrolled through the hit  
17 list to see if any of those shoes could have made the  
18 impression.

19 Q. Okay. And upon going through that -- that hit list  
20 of shoes that the database -- was it sort of a computerized  
21 search of the database?

22 A. Yes. It's a computerize -- computerized search. I  
23 do it manually, but I enter in the search parameters and then  
24 I manually look through the hit list.

25 Q. Okay. And so in going through the manual -- and

1 manually going through the hit list, did you find any shoes  
2 that seemed to be comparable to the impressions that you  
3 observed in these photos from the crime scene?

4 A. Yes, I found one shoe that could have made those  
5 impressions.

6 Q. And what type of shoe was that that you found that  
7 could have made those impressions?

8 A. In our database, it was a La Sportiva Ultrarord.

9 Q. And let me show you what's been admitted for  
10 demonstrative purposes as Exhibit 3262. Would you take a  
11 look at that particular shoe.

12 A. Yes.

13 Q. Do you recognize that shoe?

14 A. Yes, I do.

15 Q. How is it that you recognize that shoe?

16 A. It has my laboratory and specimen number on the  
17 inside of it.

18 Q. And did you examine that shoe?

19 A. Yes, I did.

20 Q. Is that the type of shoe that you found in the  
21 database that seemed to be comparable to the shapes depicted  
22 and the footprint impression depicted in Exhibit Number 2501?

23 A. Comparable, yes, in that it has the same sole  
24 pattern.

25 Q. Okay. What is on that sole pattern that is

1 comparable, if you would?

2 A. It has the arrows that you can see in the heel. It  
3 has this bar-type shape at the top and here it looks more  
4 square, but it's a geometric shape on top of the bar. And it  
5 has again arrows in the center. And then it has what I refer  
6 to as the stairstep design along the perimeter.

7 Q. And did you ultimately find out that there were  
8 more than one type of shoe made by La Sportiva that had that  
9 type of tread design on the bottom?

10 A. Yes, I did.

11 Q. And what were the other types, if you know?

12 A. They were the La Sportiva Pikes Peak and the  
13 La Sportiva Imogene.

14 Q. Let me show you what's been admitted into evidence  
15 for demonstrative purposes as Exhibit Number 3264 and then as  
16 Exhibit Number 3263. I'll show you 3264 first of all. Do  
17 you recognize that particular shoe?

18 A. Yes, I do.

19 Q. And how is it that you recognize that shoe?

20 A. It has my laboratory number and specimen number on  
21 the inside of it.

22 Q. And which shoe is that, if you know?

23 A. I would have to refer to my notes.

24 Q. Okay.

25 A. Can I refer to my notes?

1 Q. You may in order to refresh your recollection.

2 A. The first one that I looked at is the Ultranord.  
3 And this third one here is the Imogene.

4 Q. And then showing you what's been admitted for  
5 demonstrative purposes as Exhibit 3263. Do you recognize  
6 that particular shoe?

7 A. Yes, I do.

8 Q. And which one is that?

9 A. That is -- this is the Pikes Peak.

10 Q. Okay. And does that have the same tread pattern on  
11 the bottom as the other two shoes from La Sportiva?

12 A. Yes, it does. All three have the same sole  
13 pattern.

14 Q. And in examining the digital photograph --  
15 photographic images, how many did you look at?

16 A. At least 40 to 50 were on the CD.

17 Q. Okay. And then how many did you find that were  
18 useful for your examination purposes?

19 A. Approximately 20.

20 Q. Okay. And in going through those 20 photographic  
21 images, were all of those images consistent with the tread  
22 pattern on the bottom of the Pikes Peak, Imogene, and  
23 Ultranord shoe?

24 A. Yes, they were.

25 Q. Let me show you what's been marked for

1 demonstrative purposes as Exhibit 3261. I'm going to bring  
2 this over to you before showing it to the jury. Looking at  
3 what's been marked for demonstrative purposes as  
4 Exhibit 3261, do you recognize what this is?

5 A. Yes, I do.

6 Q. What is it?

7 A. It is an exhibit that was prepared at my  
8 directions, and it was prepared to illustrate my findings.

9 Q. And how was this exhibit prepared?

10 A. Photographs of the shoes and the images that I  
11 received in the case were scanned and they were placed on --  
12 in a Photoshop and a print made and mounted on that exhibit  
13 board.

14 Q. And the photos of the shoes, were they a photo of  
15 the complete shoe or just a part of the shoe?

16 A. They're a photo of the bottom of the shoe.

17 Q. And which shoes were photographed?

18 A. All three. The Ultranord, the Pikes Peak, and the  
19 Imogene.

20 Q. And then did you use some specific photo --  
21 photographic images in the preparation of this exhibit?

22 A. Yes, I picked out two photographs to illustrate my  
23 findings.

24 Q. Okay. Which images did you use?

25 A. Image number 5509 and image number 5524.



1 MR. BUTNER: I would move for the admission of  
2 Exhibit 3261 at this time, your Honor, for demonstrative  
3 purposes.

4 THE COURT: Before I get a response from the  
5 defense, 5509 and 5524 have been independently admitted? Is  
6 that the case?

7 MR. BUTNER: They have, Judge. These --

8 THE COURT: I just want to double-check the  
9 numbers.

10 MR. BUTNER: Photographic image designated  
11 5509 is admitted into evidence as Exhibit 2501. It was the  
12 one I just had on the overhead. That one right there.

13 And then photographic image designated 5524 is  
14 admitted into evidence as Exhibit Number 2513, and that was  
15 the one that I had on the overhead just before 5509.

16 THE COURT: Thank you.

17 Mr. Sears?

18 MR. SEARS: For the reasons stated earlier,  
19 your Honor, foundation. 702, 703, 403.

20 THE COURT: Overruled. 3261 is admitted, and  
21 that is the -- that's the number; correct?

22 MR. BUTNER: That's the number, Judge. Just  
23 to confirm, it's on the box over here.

24 MR. SEARS: Your Honor, it was being offered  
25 for demonstrative purposes only.

1 THE COURT: I'll clarify that too. That 3261  
2 is being offered for demonstrative purposes as I explained  
3 earlier what that means.

4 BY MR. BUTNER:

5 Q. And then just to get this cleared up before we move  
6 along, I'm going to show you what's been marked as 740 for  
7 identification purposes. Do you recognize what's depicted in  
8 Exhibit 740?

9 A. Yes, I do.

10 Q. And what is that?

11 A. It is a -- a miniature version fitting one  
12 eight-and-a-half-by-11-inch regular piece of paper, miniature  
13 version of what's on that trial exhibit.

14 Q. On 3261?

15 A. Yes, whichever number that trial exhibit is.

16 Q. Okay. So you've got the small version there marked  
17 as Exhibit 740, the eight-and-a-half-by-11 version?

18 A. Yes.

19 MR. BUTNER: I would move for the admission of  
20 Exhibit 740 for all purposes at this time.

21 THE COURT: Mr. Sears?

22 MR. SEARS: The photograph of the  
23 demonstrative exhibit, it's not as clear as the demonstrative  
24 exhibit. It lacks foundation. It violates 701, 702, 403.

25 THE COURT: Overruled. 740 is admitted.

1 MR. BUTNER: Okay. Now, Phil, could I get the  
2 easel, please.

3 THE BAILIFF: Where would you like it?

4 MR. BUTNER: Right up there, please. Thank  
5 you. I think that's the best place to put this.

6 Okay. If you could come down from the stand  
7 now, please, Mr. Gilkerson.

8 THE WITNESS: Can I step down, your Honor?

9 THE COURT: Yes, you may.

10 MR. BUTNER: With your laser pointer.

11 I think we need a little light in this area,  
12 Phil.

13 THE BAILIFF: The only thing we can do is that  
14 one.

15 MR. BUTNER: Need to turn this on; right?

16 THE BAILIFF: Yeah.

17 MR. BUTNER: Thank you. All right.

18 BY MR. BUTNER:

19 Q. Show us the shapes that you looked at on -- first  
20 of all, let's talk about image 5509.

21 MR. SEARS: Your Honor, I'm sorry,  
22 Mr. DeMocker and I can't see past Mr. Gilkerson from where we  
23 are.

24 THE COURT: Okay. Counsel, I'm going to --  
25 you can move to where you can see.

1 MR. SEARS: I can't take Mr. DeMocker with me,  
2 your Honor.

3 THE COURT: Well, then we can move it to --  
4 Phil, if you would move the easel.

5 THE WITNESS: Your Honor, I can step to the  
6 right.

7 THE COURT: Okay. The first two, feel free to  
8 move where you can see. And you have the laser pointer as  
9 well. Can everybody see now? We can move one chair to the  
10 right there if you need to do that. Okay.

11 MR. SEARS: Thank you, your Honor.

12 BY MR. BUTNER:

13 Q. Okay. Speaking first about image 5509, what  
14 particular shapes did you note to be present on that  
15 photographic image?

16 A. In the heel area is an arrow here and it's a small  
17 type of arrow. You can see that in the heel area on the  
18 Ultranord. You can see that in the heel area on the Pikes  
19 Peak. And you can see that in the heel area on the Imogene.

20 The second shape that I observed was here.  
21 Again, it's also an arrow-type shape. You can see it here on  
22 the Ultranord. It's in the toe area. Again, in the toe area  
23 of the Pikes Peak. And the toe area again of the Imogene.

24 And the third geometric shape I observed was  
25 here, this bar with a circular-type of shape at the top. You

1 can see that here in the Ultranord in the toe area. You can  
2 see it in the toe area of the Pikes Peak. And you can see  
3 that in the toe area of the Imogene.

4 And those are primarily the three things that  
5 I observed in that particular image.

6 Q. Did you find those shapes to be present on other  
7 shoes in that configuration when you consulted the database?

8 A. Yes. Arrows are present on other shoes, yes, they  
9 are.

10 Q. But were they in that same configuration as the  
11 La Sportiva shoes, the Ultranord, Pikes Peak, and Imogene?

12 A. They were not in this orientation, and they did not  
13 have this bar with a circular-type thing at the top. There  
14 were no other shoes in there that had that.

15 Q. And in reviewing those shoes, did you make any  
16 comparisons for size in terms of what size the shoe was,  
17 anything of that nature?

18 A. No, I did not attempt to -- to make a size  
19 determination.

20 Q. Okay. So you were checking to see what shoes were  
21 consistent with the impressions made in the dirt?

22 A. Yes, based on the sole pattern.

23 Q. And did you find any other shoes that were  
24 consistent with the impressions in the dirt based upon the  
25 sole pattern?

1 MR. SEARS: Foundation as to which of the 20  
2 images that he said he utilized here. We're looking at two  
3 with this exhibit. The question is broader than that.

4 THE COURT: You asked a yes or no, didn't you?

5 MR. BUTNER: Yes, I did, Judge.

6 THE COURT: Okay. Yes, you may answer that  
7 question. It's yes or no.

8 THE WITNESS: There were no other shoes in the  
9 database in our reference material and our databases that  
10 could have made this impression other than these La Sportiva  
11 shoes that are illustrated here.

12 BY MR. BUTNER:

13 Q. How many --

14 MR. SEARS: Your Honor -- I'm sorry, your  
15 Honor. Foundation. He is now pointing with a laser pointer  
16 to these two images 5509 and 5524. It's unclear whether he's  
17 talking about just those two impressions from the crime scene  
18 or others.

19 THE COURT: And I think, Mr. Butner, you'd  
20 asked a bit different question before earlier.

21 MR. BUTNER: I'll try and clear it up.

22 THE COURT: Let's start over.

23 MR. BUTNER: I'll try and clear it up.

24 THE COURT: Sustained.

25 (Next page, please.)

1 BY MR. BUTNER:

2 Q. Did you compare the La Sportiva shoes -- and let's  
3 just talk specifically about the Pikes Peak right now. Did  
4 you compare the sole pattern of the Pikes Peak shoe to all 20  
5 of the photographic images that you found were suitable for  
6 your purposes?

7 A. Yes, I did.

8 Q. And in comparing that particular sole pattern, what  
9 was your conclusion?

10 A. That Pikes Peak shoe could have made those  
11 impressions in those 20 images that I referred to as being  
12 suitable for a database search.

13 Q. Did you attempt to exclude the Pikes Peak shoe in  
14 comparing it to those 20 photographic images?

15 A. I didn't try to exclude it. I tried to find a shoe  
16 that could have made the impression. That's the purpose  
17 behind the database search.

18 Q. Okay. And were there any characteristics about the  
19 Pikes Peak shoe that would have excluded it from making the  
20 impressions in those 20 photographic images that you used?

21 A. No.

22 Q. And was -- and is that the same true for the  
23 Ultranord and the Imogene shoe made by La Sportiva?

24 A. Yes, that's correct.

25 Q. And so your opinion in regard to whether the Pikes

1 Peak or one of the other La Sportiva shoes made those images,  
2 what is your -- those shoe print impressions, what is your  
3 opinion in that regard?

4 A. Of the 20 images that I looked at that were  
5 suitable for a database search, including the two that are on  
6 the trial exhibit, those impressions could have been made by  
7 the Ultranord or the Pikes Peak or the Imogene. Either one  
8 of those three could have made the impressions.

9 Q. And did you conduct any additional research in  
10 connection with this investigation of the photographic images  
11 that you were provided from the crime scene?

12 A. When I initially received the case in our database,  
13 we just have the Ultranord, but subsequently after I issued  
14 my report, I was contacted by Detective McDormett and he  
15 indicated that there's --

16 MR. SEARS: Hearsay. Hearsay.

17 THE COURT: Sustained.

18 BY MR. BUTNER:

19 Q. Did you conduct any additional investigation?

20 A. Yes, sir, I did.

21 Q. Don't tell me what Detective McDormett told you,  
22 okay.

23 A. Yes, I did.

24 Q. What was the additional investigation that you  
25 conducted?



1       A.     I compared the Pikes Peak and the Imogene shoes to  
2 the crime scene impressions as well.

3       Q.     Okay. So you started with the Ultranord and then  
4 you went to the Pikes Peak and the Imogene?

5       A.     That's correct.

6       Q.     How many shoes were in the -- first of all, do you  
7 know how many shoes were in the SICAR database?

8       A.     Approximately 20 to 25,000.

9       Q.     And then in regard to the internal database for the  
10 FBI that you ultimately found the La Sportiva shoes in, how  
11 many approximately are in that database?

12      A.     15 to 20,000.

13      Q.     And are those 15 to 20,000 different and in  
14 addition to the SICAR database?

15      A.     There's an overlap between the two. In other  
16 words, there's some images where sole patterns that are in  
17 both systems.

18      Q.     So are you aware of actually how many images or  
19 sole patterns you consulted exactly?

20      A.     I don't know. It would be at least 20,000, but I  
21 can't say the specific number. I don't know how many overlap  
22 between the two systems.

23      Q.     Okay. And then in addition to the investigation  
24 and research on the La Sportiva shoes and the images 5509 and  
25 5524 and the other 18 images, did you do an additional

1 investigation and comparison of any other shoes in connection  
2 with this case?

3 A. Yes, I did.

4 Q. What did you do in that regard?

5 A. I compared a second set of images to shoes that  
6 were recovered from the victim.

7 Q. Okay. You can go ahead and resume the stand at  
8 this time.

9 MR. BUTNER: Go ahead and leave that up there,  
10 Phil. I'm going to put this light on. Okay.

11 (Brief pause.)

12 BY MR. BUTNER:

13 Q. Let me show you what's been marked for  
14 demonstrative purposes as Exhibit Number 3266, and this is --  
15 this is closed. Do you have a way to open this?

16 A. With my hands.

17 Q. Do you have any kind of tool or anything?

18 A. I don't.

19 Q. Okay. Maybe the clerk will give you some scissors.  
20 Thanks, Judge. All right. There's some scissors.

21 Before you go in there, do you recognize any  
22 of the markings on the outside of that box?

23 A. Not on the box.

24 Q. Okay.

25 A. On the bag.

1 Q. On the bag? There's a bag inside?

2 A. There's a bag inside. Yes, I recognize the marks  
3 on the bag inside.

4 Q. And how is it that you recognize the markings on  
5 the bag inside?

6 A. It has my laboratory number on it.

7 Q. And what was -- what was the purpose of you having  
8 your laboratory number on the bag inside?

9 A. For inventorying purposes. When we receive  
10 evidence in cases, we inventory it. We give it specimen  
11 numbers and it's assigned a lab number so that we can track  
12 it.

13 Q. Okay. And if you'll go ahead and take a look at  
14 what's inside the box and the bag. Do you recognize what  
15 is -- oh, okay.

16 Okay. Have you looked inside the bags?

17 A. Yes.

18 Q. And what do you find that are inside the bags? Do  
19 you recognize what's inside the bags?

20 A. Yes. They're two pairs of shoes. Excuse me.  
21 It's one pair of shoes that I examined.

22 Q. And what shoes are those that you examined?

23 A. These are Adidas shoes.

24 Q. Do you have any markings on either the inside or  
25 the soles of those shoes?

1       A.     Yes. I have my lab number and initials on the  
2 outside of the shoes.

3       Q.     Okay. And so what is your understanding as to what  
4 those shoes are?

5       A.     It's my understanding these are shoes from the  
6 victim.

7       Q.     And I would move for the admission -- and are those  
8 the shoes that you examined in connection with your  
9 comparison of the victim's shoes with photographic images  
10 provided to you from the crime scene?

11      A.     Yes.

12               MR. BUTNER: I would move for the admission of  
13 Exhibit 3266 for demonstrative purposes.

14               MR. SEARS: Is there a photograph coming? I  
15 have no objection to 3266 for demonstrative purposes only,  
16 your Honor.

17               THE COURT: 3266 is admitted for demonstrative  
18 purposes.

19 BY MR. BUTNER:

20      Q.     And then let me show you what's been marked as  
21 Exhibit Number 935. I'd ask if you recognize that particular  
22 photograph?

23      A.     Yes.

24      Q.     What is that, sir?

25      A.     It's a photocopy of a photograph of the bottom of

1 these shoes.

2 Q. And are you the person that had that photograph  
3 taken?

4 A. Yes, they were taken at my direction.

5 Q. And is that an accurate representation of the shoes  
6 as they appeared when you analyzed them in connection with  
7 this particular case?

8 A. Yes.

9 MR. BUTNER: I would move for the admission of  
10 Exhibit 935 at this time.

11 MR. SEARS: Voir dire, your Honor?

12 THE COURT: Yes.

13 MR. SEARS: Thank you.

14

15 V O I R D I R E E X A M I N A T I O N

16 BY MR. SEARS:

17 Q. Mr. Gilkerson, that photograph you have in your  
18 hand shows a picture of the bottom of the shoes in front of  
19 you with an FBI scale or ruler in the picture; is that right?

20 A. Yes, that's correct.

21 Q. What was the purpose of putting the scale or ruler  
22 in the picture, please?

23 A. To make a one-to-one print of the shoes. In other  
24 words, a one-to-one print is the same size as it appears in  
25 real life.

1 Q. Of the photograph? You wanted to take that  
2 photograph and enlarge it to actual size; is that right?

3 A. Yes. That's what we typically do in all cases when  
4 we photograph shoes.

5 Q. Now, we're not talking about using that scale of  
6 the measurements for the shoe in question to in any way  
7 conduct an identification with questioned impressions in the  
8 ground that you were sent; correct?

9 A. Well, I was sent these shoes and asked to determine  
10 whether or not they made any of the impressions at the crime  
11 scene.

12 Q. Were you able based upon the forensic images that  
13 you were sent by the police here in Yavapai County to use the  
14 measurements from the shoe -- the known shoe that you have in  
15 front of you against those impressions?

16 A. I would have to look at the photographs that you're  
17 referring to.

18 Q. Okay. My understand is you did not make an  
19 identification between the known shoe in front of you and any  
20 of the photographic images; is that right?

21 A. The -- the second set of images that I looked at  
22 could have been made by these shoes, but it's not an  
23 identification and I can't definitively say that they were  
24 made by these shoes.

25 Q. Okay. Just take a moment. In your vocabulary at

1 the FBI, Mr. Gilkerson, when you say you have made an  
2 identification, might other people say that you are saying  
3 that a shoe -- a known shoe matched a photograph?

4 A. Yes, it would mean, for example, this shoe and this  
5 shoe alone is the source of a particular impression.

6 Q. And you're not --

7 A. That's what I mean by identification.

8 Q. And you're not saying that with respect to your  
9 work in this case regarding that shoe and the images that you  
10 were sent, you are not saying that that shoe and that shoe  
11 only made those photograph impressions; correct?

12 A. In that second set of photographs, that's correct.  
13 I'm saying it could have made the impression, but I'm not  
14 saying it's an identification and I'm not saying that they  
15 definitively made the impressions.

16 Q. So the use of the scale or the ruler in the  
17 photograph that you have in front you that the State has now  
18 offered was put there in an attempt to make an identification  
19 which did not succeed; correct?

20 A. It's what we normally do in photography. We put a  
21 ruler there for -- to make a one-to-one print. The actual  
22 identification would come from making a test print of the  
23 shoe.

24 MR. SEARS: Okay. With those qualifications  
25 and clarifications, your Honor, I have no objection to that

1 photograph.

2 THE COURT: 935 is admitted.

3

4 DIRECT EXAMINATION (Continued)

5 BY MR. BUTNER:

6 Q. Just to clarify, the rulers that are in that  
7 photograph now admitted into evidence as Exhibit 935, they  
8 weren't in that photograph in an attempt to make an  
9 identification one to one with the shoe impression, were  
10 they, Mr. Gilkerson?

11 A. No. They're just put in there -- we put them in  
12 all of the photographs -- all of the photographs we put a  
13 scale in there to make an accurate one-to-one print as we  
14 can. In other words, one-to-one print means the shoe and the  
15 image is the same size as it appears in real life.

16 Q. And that particular photograph that's admitted into  
17 evidence as Exhibit 935, that's been shrunk down from the  
18 original photograph to an eight-and-a-half-by-11 size; right?

19 A. Yes, that's correct.

20 Q. So there's no way it could be a one-to-one size as  
21 it's presently depicted; right?

22 A. No. That's why I described it as a photocopy of a  
23 one-to-one print.

24 Q. Okay. Thank you.

25 Now, let me show you what's been admitted into



1 evidence as Exhibits Number 2515, 2516, 2517, 2518, and 2519.  
2 If you would take a look at these photographs. And they're  
3 identified on the back by their image number in handwriting,  
4 but do you recognize those photographs that I've just shown  
5 you?

6 A. Yes, I do. They're images that I examined in this  
7 case.

8 Q. So they're digital photo images that you used for  
9 your examination purposes in this case?

10 A. Yes.

11 Q. Okay. And how did you use them in this particular  
12 case?

13 A. I compared them to these shoes that were submitted  
14 that came from the victim.

15 Q. And in comparing these photographs -- and I guess  
16 it's time to go back to the overhead. Thank you, sir.  
17 Thanks, Phil.

18 Okay. First of all, let's put on the overhead  
19 the photograph of the shoes now admitted into evidence as  
20 Exhibit 935. Okay. Looking at Exhibit 935, is this -- what  
21 about the bottom or sole of these shoes was significant for  
22 your comparison purposes?

23 A. Well, I looked at the entire sole pattern, but  
24 there are a series of Zs in the bottom of the heel that are  
25 somewhat unusual.

1 Q. And were there any other shapes on the shoes that  
2 you used for comparison purposes?

3 A. Primarily the Zs, but I examined the entire sole  
4 pattern.

5 Q. Okay. And then looking at the photographs that  
6 we've just described as Exhibits 2515 through 19, on those  
7 particular photographs, what did you note by way of  
8 comparison to the shoes of the victim?

9 A. Well, in the image on top here, image number 1477,  
10 there are a series of Zs in the bottom of the heel.

11 MR. SEARS: Your Honor, I think we need to  
12 make the record clear if he'd refer to it by exhibit number,  
13 not image number.

14 THE WITNESS: Exhibit Number 825.

15 THE COURT: Mr. Butner, if you could --

16 MR. BUTNER: I'll get it. It's the really  
17 small number.

18 THE WITNESS: Sorry.

19 THE COURT: It's okay.

20 MR. BUTNER: It's Exhibit Number 2519 for the  
21 record.

22 THE WITNESS: Thank you.

23 BY MR. BUTNER:

24 Q. And we'll put that on the overhead in just a  
25 second. In fact, would it help to put it on the overhead at

1 this point?

2 A. Yes, it would.

3 Q. Okay. Okay. For the record, I've placed Exhibit  
4 Number 2519 on the overhead projector, and you have the laser  
5 pointer available. Would you point to what you thought was  
6 significant about this particular photograph.

7 A. Yes. In this heel area, there are some -- what  
8 looks like the letter Z here, and those can be found on the  
9 bottom of the shoe as well. There's also some bars in the  
10 center here. They're on the bottom of the shoe. And then  
11 there's what looks like a -- it looks like a -- an elliptical  
12 shape here. That's the same shape of the groove in the  
13 center of the heel on the shoe and at the bottom where the  
14 letter Zs I just pointed to and at the center are these bars  
15 here.

16 Q. Okay. And how many photographs did you compare  
17 those shoes to in making your investigation and comparison?

18 A. Can I refer to my report?

19 Q. Certainly. To refresh your recollection.

20 A. There were three images that I used where I said  
21 that the -- that the shoes from the victim could have made  
22 the impressions. And in my report, I have them listed as  
23 images 1475, 1476, and 1477.

24 Q. Okay.

25 MR. SEARS: Your Honor, by way of

1 clarification, could the witness explain whether these images  
2 were sent to him after he received the first CD with the more  
3 than 40 images he's told us about earlier? Is there another  
4 set of images he was sent?

5 THE COURT: Mr. Butner, I guess the  
6 foundation-type question.

7 MR. BUTNER: I'll go ahead -- sure. I'll go  
8 ahead and ask that.

9 MR. SEARS: Thank you.

10 BY MR. BUTNER:

11 Q. These images that contain 1475, 1476, and 1477,  
12 were you provided that at the time of your original  
13 investigation in connection with this case?

14 A. No. I was submitted these after I had done my  
15 database search.

16 Q. Okay. So these came at a later point in time?

17 A. Yes.

18 Q. Do you recall when you received those images?

19 A. It would have been sometime around April.

20 Q. Of what year?

21 A. April of this year.

22 Q. Okay. April of 2010. And let's -- for the record,  
23 let's put -- let's put those images on the overhead, the  
24 ELMO, at this time starting with image 1475.

25 THE COURT: That corresponds to what exhibit

1 number?

2 MR. BUTNER: I'm sorry, Judge. Yeah, I meant  
3 to say that. For the record, image 1475 has been admitted  
4 into evidence as Exhibit 2517.

5 THE COURT: Thank you.

6 BY MR. BUTNER:

7 Q. And in looking at Exhibit 2517 -- you have the  
8 laser pointer handy there -- what is of significance in this  
9 particular photographic image?

10 A. May I step down again?

11 THE COURT: You may.

12 THE WITNESS: I can get a better picture.  
13 There are some bars here in the center and they are also on  
14 the bottom of the victim's shoe in the toe area.

15 BY MR. BUTNER:

16 Q. Okay. And then showing you image 1476, which has  
17 been admitted into evidence as Exhibit 2518, what is of  
18 significance in that particular photograph?

19 A. Again, there's some bars and they're also visible  
20 on the bottom of the victim's shoe as well.

21 Q. And then going back to the original photograph that  
22 you started discussing, that was image number 1477, that's  
23 Exhibit Number 2519, and that -- that's more of a complete  
24 photograph of the sole impression in the dirt; right?

25 A. Yes, of the three images, this -- this one had the

1 best detail. The letter Zs are here in the heel and again  
2 the bars in the center and the toe and then what looks like  
3 an elliptical shape, which is the shape of the groove in the  
4 toe area of the victim's shoe.

5 Q. Okay. And so did you reach any conclusions in  
6 connection or in conjunction with your examination of the  
7 victim's shoes and then your examination of these  
8 photographs?

9 A. Yes. My opinion is that the victim's shoe could  
10 have made this impression, but I can't definitively say that  
11 it did.

12 Q. Okay. And then -- if you could go ahead and resume  
13 the stand. Let me show you what's been marked for  
14 identification purposes as Exhibit 3267. Do you recognize  
15 what Exhibit 3267 is?

16 A. Yes.

17 Q. What is that, sir?

18 A. It is a photocopy of my lab report, the final lab  
19 report that I issued in this case.

20 Q. Okay. And is that your lab report concerning your  
21 examination of the victim's shoes and comparison with the  
22 photographs we've just been discussing?

23 A. Yes.

24 MR. BUTNER: I would move for the admission of  
25 Exhibit 3267 at this time.

1 MR. SEARS: Voir dire, your Honor?

2 THE COURT: Yes.

3 MR. SEARS: Thank you.

4

5 V O I R D I R E E X A M I N A T I O N

6 BY MR. SEARS:

7 Q. Mr. Gilkerson, looking at page 2 of the exhibit you  
8 have in front of you, I think it's 3267, if I understand what  
9 you're saying there that the three photographs you've just  
10 been seen images 1475, 76, and 77, you say that due to the  
11 limited detail retained in these impressions and due to the  
12 lack of sufficient identifying characteristics a more  
13 positive association was not made. Is that your conclusion  
14 about those three photographs?

15 A. Yes. Those are the reasons why I could not make an  
16 identification.

17 Q. Did any part of that conclusion involve the --  
18 the -- the quality or lack of quality of the forensic images  
19 you were provided by local law enforcement?

20 A. Well, yes, that's what I'm talking about when I  
21 referred to lack of sufficient detail or limited detail.

22 Q. The photographs were of such poor quality you could  
23 not see enough detail to make a clear identification?

24 A. Well, there were no defects that are on the bottom  
25 of these shoes that appeared in the images. That's in

1 essence what that means.

2 Q. At least in some way the quality or lack of quality  
3 of the photographs taken by local law enforcement influenced  
4 the opinion in the exhibit in front of you? Is that what  
5 you're saying?

6 MR. BUTNER: Objection, Judge. He's leading  
7 this witness. This is not proper voir dire. It's actually  
8 cross-examination.

9 MR. SEARS: Foundation, your Honor. It goes  
10 to foundation.

11 THE COURT: Overruled. 3267 is admitted.

12 MR. SEARS: I'm sorry. I don't believe I got  
13 an answer to my last question. I simply responded to the  
14 State's objection.

15 THE COURT: The --

16 MR. SEARS: The State objected to my question.  
17 You overruled their objection.

18 THE COURT: No, I didn't. I thought you had  
19 completed your voir dire questioning. I -- I'm sustaining  
20 the objection to the voir dire question. Mr. Sears, do you  
21 have other questions that go strictly to foundation?

22 MR. SEARS: No, your Honor. And I actually  
23 have no objection to -- now that I understand the basis for  
24 this, I have no objection to this exhibit.

25 THE COURT: 3267 is admitted.



1 MR. BUTNER: Thanks, Judge.

2

3 DIRECT EXAMINATION (Continued)

4 BY MR. BUTNER:

5 Q. Just to clarify, Mr. Gilkerson, were the  
6 photographic images that you were provided by the Yavapai  
7 County Sheriff's Office of sufficient quality for you to  
8 conduct your examination?

9 A. This particular image, yes, they were of sufficient  
10 detail, sufficient detail for me to compare them to the shoes  
11 of the victim -- victim, yes.

12 Q. Okay. And to make an absolutely positive  
13 identification, what would you have needed?

14 A. There would have to be cuts or defects or a rock  
15 perhaps embedded into the bottom of the shoe that would have  
16 to also appear in the same area in the photograph.

17 Q. Do you get that very often with photographic  
18 images?

19 A. Not for impressions in sand and soil, no.

20 Q. Were these in photographic images provided by the  
21 Yavapai County Sheriff's Office the usual type of  
22 photographic images that you receive when you are asked to  
23 make your comparisons?

24 MR. SEARS: Foundation. Relevance.

25 THE COURT: Sustained.

1 MR. SEARS: Your Honor, may the record reflect  
2 that Exhibit 2519 is being displayed for the witness, and  
3 when he's making reference to that photograph, he's pointing  
4 to Exhibit 2519.

5 THE COURT: Okay.

6 MR. SEARS: Thank you, your Honor.

7 BY MR. BUTNER:

8 Q. Okay. Let's back up a moment to the photographic  
9 images that you examined in connection with your comparison  
10 of the La Sportiva shoes. Did you prepare a report in  
11 connection with the examination of Exhibits numbered 2513 and  
12 2501 as well as the other 18 digital photographs?

13 MR. BUTNER: And for the record, I'm putting  
14 Exhibit Number 2501 on the ELMO at this time, Judge.

15 BY MR. BUTNER:

16 Q. Did you prepare a report in connection with your  
17 evaluation of those 20 photographic images and the  
18 La Sportiva shoes?

19 A. Yes.

20 MR. SEARS: I assume we are talking about the  
21 database search or the subsequent comparison, your Honor?

22 THE COURT: Mr. -- sustained as to foundation.  
23 Mr. Butner?

24 MR. BUTNER: I asked him a foundational  
25 question, Judge. That's what I'm trying to do is lay some

1 further foundation.

2 BY MR. BUTNER:

3 Q. Did you prepare a report in connection with the  
4 examination of -- first of all, did you prepare a report in  
5 connection with the examination of the photographic images  
6 that you were provided by the Yavapai County Sheriff's  
7 Office?

8 A. Yes, I did.

9 Q. And is that report -- let me show you what's been  
10 marked as Exhibit Number 812.

11 MR. BUTNER: And, Judge, I conferred with  
12 counsel. We have a duplication of one of the pages, and I'd  
13 like to remove the top page from this exhibit. It's  
14 duplicated and the next page also. I've shown that to  
15 opposing counsel, and I don't think there's any objection.

16 THE COURT: Mr. Sears, you agree there's just  
17 a duplication of the first page?

18 MR. SEARS: Yes.

19 MR. BUTNER: Any objection?

20 MR. SEARS: Just a second.

21 THE COURT: I guess there's no objection.

22 Mr. Sears, I couldn't hear if you objected.

23 MR. SEARS: I said just a second, your Honor.

24 THE COURT: Oh, I'm sorry.

25 MR. SEARS: The answer is, no, I have no

1 objection.

2 MR. BUTNER: Thank you.

3 THE COURT: Okay. Go ahead and remove the  
4 page.

5 BY MR. BUTNER:

6 Q. I'm showing you what has been marked as Exhibit  
7 Number 812. Do you recognize this particular document, sir?

8 A. Yes, I do.

9 Q. And what is that?

10 A. It is a photocopy of the second lab report that I  
11 issued in this case.

12 Q. And does that incapsulize all of the lab report and  
13 all of the lab work that you did in connection with the  
14 examination of the photographic images provided to you by the  
15 Yavapai County Sheriff's Office as well as the comparison of  
16 the La Sportiva shoes?

17 A. Yes, it does.

18 Q. So is that your complete summary of the work that  
19 you did in connection with your examination of the digital  
20 evidence, the digital photographic evidence, as well as the  
21 comparison with the shoes?

22 A. Yes. And as it relates to the database search,  
23 yes.

24 MR. BUTNER: Okay. I would move for the  
25 admission of Exhibit Number 812 at this time.

1 THE COURT: Mr. Sears?

2 MR. SEARS: Question on voir dire.

3 THE COURT: Yes.

4

5 V O I R D I R E E X A M I N A T I O N

6 BY MR. SEARS:

7 Q. Mr. Gilkerson, are you saying that somewhere in  
8 this Exhibit 812 is your report regarding your database  
9 search?

10 A. I'm saying that that is included in this report,  
11 yes.

12 Q. Where?

13 A. It's on page 2 where I refer to the first lab  
14 report that I issued. There's a statement at the top the  
15 first sentence.

16 Q. Dated October 22<sup>nd</sup>, 2009?

17 A. Yes, that's correct. That alludes to the  
18 conclusions that I reached in that first laboratory report.

19 MR. SEARS: Thank you. No objection, your  
20 Honor.

21 THE COURT: Okay. Exhibit 812 is admitted.

22 MR. BUTNER: Okay. Could I see 812, please.  
23 Thank you.

24 And if I may, Judge, I'm going to place this  
25 on the overhead at this time.

1 THE COURT: Okay.

2

3 DIRECT EXAMINATION (Continued)

4 BY MR. BUTNER:

5 Q. For the record, I'm placing Exhibit 812 on the  
6 overhead projector. Actually, let's just start with the  
7 first page. Okay. You indicate on this page that this  
8 report contains the results of the footwear examinations;  
9 correct?

10 A. Yes, that's correct.

11 Q. Would you describe for us what you mean by that?

12 A. I compared all three of those shoes to the 20 crime  
13 scene images that I said were of sufficient value.

14 Q. Okay. And then going to page 2 of 2 on the lab  
15 report, does that contain your results of examination?

16 A. Yes, it does.

17 Q. And would you explain to us what your results of  
18 examination were, please?

19 A. There -- it's in essence a summary of my findings  
20 in the case. It summarizes my conclusions.

21 Q. Okay. And when you say it refers to your previous  
22 report, tell us what you mean by that.

23 A. As the statement says at the very -- the very first  
24 statement per FBI laboratory report dated October 22<sup>nd</sup>,  
25 2009: "The footwear impressions depicted in images 5401 to

1 5412 and so forth, the images on the Q1 CD most closely  
2 correspond with laboratory reference materials for a  
3 La Sportiva Ultranord shoe GTXXER, which I call an Ultranord  
4 shoe. As such, these impressions share similar design  
5 features with the K1 Ultranord shoe, which I actually  
6 received in the case, as well as it shares similar design  
7 features with the K2 Pikes Peak and the K3, K4 Imogene  
8 shoes."

9                   And then the very last statement is my summary  
10 of all of that where I say: "Therefore, the La Sportiva  
11 Ultranord, Pikes Peak, and Imogene model shoes could be the  
12 sources of the footwear impressions in the 20 images that I  
13 said had sufficient detail." In other words, they could  
14 have -- a shoe of that design could have made the  
15 impressions.

16       Q.     And you have enumerated all of the 20 some images  
17 that you looked at when you did your comparisons at the  
18 outset; is that correct?

19       A.     Yes, that's correct.

20       Q.     That's what those numbers are 5401 through 5412,  
21 5507 through 5510, and 5522 through 5525?

22       A.     Yes. Those were the image -- those were the names  
23 of image files on the CD that I received.

24       Q.     And as a final exhibit, we have the victim's shoes  
25 before you, but I'd like to show you what's been marked as

1 Exhibit Number 368. If you would take a look -- now, that  
2 refers to the examination of the La Sportiva shoes. I'm  
3 showing you Exhibit 368. If you would take a look at that  
4 particular set of photographs. Do you recognize what's  
5 depicted in Exhibit 368?

6 A. Yes, they're pictures of the victim's shoes.

7 Q. Okay. You recognize those as accurate depictions  
8 of the victim's shoes?

9 A. Yes.

10 MR. BUTNER: I would move for the admission of  
11 368 at this time.

12 MR. SEARS: No objection.

13 THE COURT: Exhibit 368 is admitted.

14 BY MR. BUTNER:

15 Q. So now have we discussed all of your conclusions  
16 concerning the victim's shoes in connection with this case?

17 A. Yes.

18 Q. And have we discussed now all of your conclusions  
19 concerning the La Sportiva shoes by way of comparison with  
20 photographs from the crime scene in this case?

21 A. Yes, of all the ones that I could do an analysis  
22 on. There were others where I could not do an analysis on.  
23 They were not of sufficient quality.

24 Q. But you had 20 that were of sufficient quality for  
25 you to perform your examination and comparison?



1           A.       Yes, that's correct.

2                   MR. BUTNER:   Okay.   I have no further  
3 questions of this witness at this time.   Thank you, sir.

4                   THE COURT:   Thank you, Mr. Butner.

5                   We will go ahead and take the afternoon recess  
6 at this time.   So, ladies and gentlemen, please remember the  
7 admonition.   Please be back in the jury room by 3:00 o'clock  
8 so we can start as soon after that as possible.

9                   Mr. Gilkerson, I would remind you that the  
10 rule of exclusion of witnesses has been invoked.   You  
11 probably understand what that means.

12                   THE WITNESS:   Yes, sir.

13                   THE COURT:   And now I'll just remind you that  
14 you cannot talk to any other witnesses until the trial is  
15 over.   I give a little more elaborate explanation when the  
16 witness is excused.

17                   But we will take a recess at this time.   Thank  
18 you.

19                   THE WITNESS:   Thank you.

20                   (Recess from 2:42 p.m. to 3:04 p.m.)

21                   THE COURT:   Please be seated.   Thank you.

22                   The record will show the presence of the  
23 defendant, all of the attorneys, and the jury.   The witness,  
24 Mr. Gilkerson, has returned to the stand.   He's previously  
25 been sworn.

1                   Mr. Sears, you may begin your  
2 cross-examination.

3                   MR. SEARS: Thank you.  
4

5                   C R O S S - E X A M I N A T I O N

6 BY MR. SEARS:

7           Q.     Good afternoon again, Mr. Gilkerson.

8           A.     Good afternoon, Mr. Sears.

9           Q.     I feel compelled to point out, Mr. Gilkerson, that  
10 you and I have something in common. We -- we both graduated  
11 from the University of Maryland and I know we've talked about  
12 that. Sadly for me, I graduated many, many years before you  
13 went there.

14          A.     I'm not a spring chicken either.

15          Q.     Well, and I'm glad to see you again.

16                   My understanding is that you are a civilian  
17 employee of the FBI rather than a special agent; is that  
18 right?

19          A.     Yes, that's correct.

20          Q.     Are there special agents employed in the FBI crime  
21 laboratory?

22          A.     Yes, there are.

23          Q.     Okay. But you are a -- you are and have always  
24 been a civilian employee?

25          A.     Yes, that's correct.

1 Q. Okay. And so we can talk just a minute if we might  
2 about the timing of this. My understanding is that your  
3 first contact in the case came in the fall of 2009; is that  
4 right?

5 A. Yes, that's right.

6 Q. Okay. And if I told you that -- that apparently  
7 local law enforcement, the Yavapai County Arizona Sheriff's  
8 Office, was in communication with Agent Fagan from the FBI  
9 office in Flagstaff, Arizona, is that your understanding?

10 A. Yes, that's correct.

11 Q. And that they sent information through Agent Fagan  
12 to you, this compact disc, this CD, with these digital images  
13 on it for you to review; correct?

14 A. Yes, that's correct.

15 Q. So Agent Fagan was the middle man? He was the  
16 contact point apparently between local law enforcement here  
17 and your laboratory; correct?

18 A. Yes. At the onset, that's correct.

19 Q. Okay. And then eventually you had occasion to talk  
20 to Detective McDormett; is that right?

21 A. Yes. Then I received two subsequent submissions,  
22 and they came from Detective McDormett himself.

23 Q. Okay. And by October 22<sup>nd</sup> of 2009, you had  
24 actually prepared a written report which summarized the  
25 results of your database search --

1 A. Yes, that's correct.

2 Q. -- is that right? So that information was in the  
3 possession of the Yavapai County Sheriff's Office sometime by  
4 the end of October of last year; correct?

5 A. Yes.

6 Q. All right. And then in the spring of 2010, you did  
7 the additional work that you've told us about when you got  
8 these sample shoes sent to you and you got the shoes that  
9 were purportedly worn by the victim on the night she was  
10 killed; correct?

11 A. Yes. That would have been in March and April of  
12 this year 2010.

13 Q. And we've seen your reports dated in March and then  
14 the reports in April following up on that same work; is that  
15 right?

16 A. Yes, that's correct.

17 Q. Okay. And you're done with your work in this case?  
18 You've not been asked to do anything following your March and  
19 April 2010 reports; is that right?

20 A. Yes, that's correct.

21 Q. Okay. Now, let's talk a little bit about this  
22 database search so that we can understand what's involved.  
23 You said there were two different databases available to you  
24 as a forensic examiner at the FBI; correct, with regard to  
25 shoe print evidence?

1 A. Yes, that's correct.

2 Q. Okay. And one of them is this SICAR, S-I-C-A-R,  
3 database; is that right?

4 A. Yes, that's correct.

5 Q. Now, can you tell us, if you know, how many  
6 different outsoles, which is what you call the bottom of a  
7 pair of shoes; right?

8 A. Yes.

9 Q. How many different outsoles are there in the world  
10 at any one time?

11 A. I don't know exactly.

12 Q. Okay. You said that -- the number I think you gave  
13 us today for the SICAR database was that it might have 20 to  
14 25,000 different images in it; correct?

15 A. Yes, that's correct.

16 Q. You're not precisely sure, but you think it's  
17 somewhere in that range; is that right?

18 A. Yes. It's an estimate, that's correct.

19 Q. Now, it's -- it's commercially produced by a  
20 company. The name of the company again is?

21 A. Foster and Freeman.

22 Q. Okay. And do you know where they get the  
23 information that goes into the database?

24 A. I know some of it they get from the manufacturers  
25 themselves, but I'm not sure and they may get them from some

1 law enforcement agencies, but I don't know entirely where  
2 they get all their images.

3 Q. But the FBI apparently subscribes to it. Do you  
4 get updates frequently?

5 A. Yes, we do.

6 Q. Okay. As new information comes in; correct?

7 A. Yes, that's correct.

8 Q. Okay. But you can't tell us what percentage of the  
9 total number of outsole designs that 20 to 25,000 images  
10 represents, can you?

11 A. No, I would have no way of knowing. The exact  
12 number of outsoles that exists is not known.

13 Q. Okay. When you and I met in Virginia at the lab  
14 there this spring, you were talking about a book that you  
15 thought was important by a former FBI agent named William  
16 Bodziak. Do you remember talking about that?

17 A. Yes.

18 Q. Is this that book?

19 A. That's the first edition.

20 Q. The first edition?

21 A. He's issued a subsequent edition.

22 Q. I went out and bought a copy, and I've read it  
23 carefully.

24 A. Okay. He's updated the book since then.

25 Q. And this is a very important reference material for

1 your work, isn't it?

2 A. It is a reference material, correct.

3 Q. Okay. It's an FBI agent writing about -- and the  
4 title of the book is *Footwear Impression Evidence*. It's what  
5 we're here to talk about today; right?

6 A. That's correct.

7 Q. Okay. And would you agree with this proposition,  
8 that maintaining a complete collection of all shoe designs  
9 for the law enforcement community has become an impossible  
10 task?

11 A. Yes, that's correct.

12 Q. Okay. And would you also agree with this idea,  
13 that it has become very commonplace for small footwear  
14 companies to manufacture footwear without sole designs that  
15 closely resemble those found on other name-brand shoes? Is  
16 that your experience?

17 A. Yes, that can happen, yes.

18 Q. Is that sometimes called knocking off a competitor?

19 A. It could be, yes.

20 Q. Okay. And I guess there's a difference and that's  
21 what -- what trademark law and trademark litigation is about,  
22 whether your -- your use of somebody else's design infringes  
23 on their trademark or copyright or whether it's just similar  
24 to? I mean, that's kind of the discussion that might be had  
25 under this particular theory; right, that sometimes it's a

1 problem in the industry; right?

2 A. Right. Whether they can make the sole legally  
3 versus counterfeiting it per se and doing it illegally.

4 Q. And would you agree that that fact, that fact being  
5 that -- that sometimes small companies particularly will  
6 manufacture footwear with an outsole design that closely  
7 resembles somebody else's outsole design needs to be  
8 considered when trying to associate a particular impression  
9 with a particular brand of shoe?

10 A. Well, yes, if that's in your reference, but I'm  
11 just referring to and utilizing the reference material at  
12 hand, which would be our two databases.

13 Q. Okay. And the other database is one that the FBI  
14 maintained for a number of years, but stopped updating at  
15 some point; is that right?

16 A. Yes, that's correct.

17 Q. And when did the FBI stop updating its shoe wear  
18 database?

19 A. It would have been around 2007 or 2008.

20 Q. So from our conversations over the past few months,  
21 my understanding of the -- of this database search is that  
22 the first thing you do is look at the questioned impressions;  
23 right? In this case, they were available to you only by  
24 photograph; correct?

25 A. They were available on a -- as images on a CD.



1 Q. Okay. And sometimes though you get  
2 three-dimensional images of questioned shoe print impression  
3 for examination; correct?

4 A. Yes, we do.

5 Q. Okay. And that's done by a process called casting;  
6 correct?

7 A. Yes, it is.

8 Q. Tell us what casting is with regard to shoe print  
9 evidence.

10 A. Basically, casting is -- consists of a gypsum-type  
11 material. You mix it with water and you mix it up and you  
12 pour next to an impression, let it flow in kind of like lava,  
13 and it gives you a life-size representation of what the shoe  
14 print actually is at the crime scene.

15 Q. And you would agree that in some instances a good  
16 cast of a shoe print impression provides even microscopic  
17 details of the impression at the scene; correct?

18 A. It can, yes.

19 Q. Okay. And so you were talking about defects in the  
20 shoe, a rock wedged in the tread of the shoe or a tear or a  
21 cut in the -- in the outsole. A good cast might preserve  
22 those defects; correct?

23 A. Yes, that's correct, provided it's in the  
24 impression to begin with, yes.

25 Q. And a cast is three-dimensional; right?

1 A. Yes.

2 Q. As opposed to a photograph which is  
3 two-dimensional; correct?

4 A. Yes, that's correct.

5 Q. So that's another added advantage of having a cast;  
6 is that right?

7 A. Yes. It can provide more detail.

8 Q. Okay. And details in terms of measurements, you're  
9 looking at the actual measurements, you don't have to rely on  
10 scales or photographs or anything like that? You're looking  
11 at an actual one-to-one representation of the impression in  
12 the ground; correct?

13 A. Yes, that's part of it.

14 Q. Okay. Now, in the -- in the images that you were  
15 given to look at of this crime scene, was there anything  
16 about what you could see in those images that made you think,  
17 you know, they just never could have cast any of these?

18 A. No. All of the impressions could have been cast.

19 Q. Okay. But they weren't done? They weren't cast?

20 A. To my knowledge, yes, they were not cast.

21 Q. Okay. Okay. And while we're at it, let's talk  
22 about -- about what you know about these images. You said on  
23 direct examination here earlier that these were photographs  
24 or images of some impressions in the dirt at a crime scene.

25 A. Yes, that's correct.

1 Q. That's really all you know, isn't it?

2 A. Well, that was the information that's provided that  
3 it was in reference to this particular case from that crime  
4 scene in this case.

5 Q. Okay. Have you been to that crime scene?

6 A. No, I haven't.

7 Q. Okay. Do you know where in the United States of  
8 America this crime scene is located?

9 A. I don't know specifically the address of the crime  
10 scene, no.

11 Q. Okay. And most importantly, these -- these images  
12 you were given -- if I told you that the total number on --  
13 on the CD you were first provided is 55, does that sound  
14 right?

15 A. That sounds about right.

16 Q. Okay. And of the 55, you thought 20 had sufficient  
17 detail; is that right?

18 A. Yes, 20 had sufficient detail for me to search the  
19 database.

20 Q. Okay. And sufficient detail in that context simply  
21 means that you can see enough of at least one geometric  
22 pattern in the dirt impression to be able to use that as what  
23 you called a search parameter in the database; right?

24 A. Yes.

25 Q. That's all you have to see?

1           A.     Yes, that's correct.

2           Q.     Okay. You don't have to see an entire heel to toe  
3 print? You just need to see at least one identifiable  
4 geometric shape; right?

5           A.     Yes. We can search what are called partial  
6 impressions.

7           Q.     Okay.

8           A.     Just a heel or perhaps just a toe.

9           Q.     In fact, the impressions even of the 20 impressions  
10 you had, some of them were clearly partial impressions?  
11 We've seen that today; right?

12          A.     Yes, that's correct.

13          Q.     Where you can't see all of the -- all of the  
14 outsole?

15          A.     That's correct.

16          Q.     Okay. But you could see what made those 20 useful  
17 to you was that you could see some geometric shape in each  
18 one?

19          A.     Yes, that's correct.

20          Q.     And I think you showed us here today that even  
21 among the handful of photos that we've looked at here today,  
22 there were some photographs that have just one visible  
23 geometric characteristic and some that have two or three;  
24 right?

25          A.     Well, I used -- the ones that I used on the trial

1 exhibit had a minimum of three.

2 Q. Right. But we looked at some other photos that  
3 weren't in your trial exhibit here --

4 A. Yes.

5 Q. -- that just had one?

6 A. Yes, that's correct.

7 Q. Okay. But it met that -- that meant that there was  
8 sufficient detail, that's your term, to be used in the  
9 database search; right?

10 A. Yes, that's correct.

11 Q. Okay. Now, let's talk about preservation. We've  
12 talked a little bit about casting. Let's talk about forensic  
13 photography in this case. And you said that you've had  
14 training and certainly I imagine every day that you go to  
15 work, you look at photographs taken of questioned impressions  
16 in the ground; correct?

17 A. Yes, that's correct.

18 Q. That's a big part of what you do; correct?

19 A. Yes, it is.

20 Q. Okay. So you are I am certain intimately familiar  
21 with good practices and best practices in forensic  
22 photography of shoe print impressions; correct?

23 A. Yes, that's correct.

24 Q. Okay. And so in -- and the FBI has training  
25 available and you've been trained at least to some extent in

1 forensic photography of impression evidence; correct?

2 A. Yes, that's correct.

3 Q. Okay. So one of the -- one of the things that  
4 would be important if -- if local law enforcement like this  
5 wanted to forensically photograph these impressions would be  
6 to take the picture from directly above the impression in the  
7 ground; correct?

8 A. Yes, that's correct.

9 Q. As soon as the camera is at an angle and not  
10 directly above, that changes the value of the image to  
11 someone in your position; correct?

12 A. It depends on what -- what the analysis or question  
13 is. It may for a comparison with a suspect shoe. It may not  
14 for a database search.

15 Q. Right. But --

16 A. It depends on the case.

17 Q. Sure. The database search is just based on can we  
18 see a geometric feature; correct?

19 A. Yes, that's correct.

20 Q. Now, in -- and we've talked with other people about  
21 this and we won't go over every point, but lighting is  
22 important for good forensic photography of shoe print  
23 evidence; correct?

24 A. It's very important.

25 Q. Okay. And -- and the failure to use proper

1 lighting techniques can make an otherwise potentially useful  
2 photograph useless; correct?

3 A. Yes, that's true.

4 Q. Okay. And then the use of these scales, these  
5 measuring devices, is important; right?

6 A. Yes, it is.

7 Q. And one of the things we've talked about with other  
8 people is the idea that shoe print impressions often have a  
9 third dimension, length and width and depth; correct?

10 A. Yes, that's correct.

11 Q. Okay. And so --

12 A. For soil impression.

13 Q. Yes. And one of the -- one of the important  
14 techniques then is to have that scale, that ruler at the --  
15 which end of the impression? The top or the bottom of the  
16 impression?

17 A. It should be at the bottom level of the impression  
18 because then it's on the same plane as the -- as the shoe  
19 print itself.

20 Q. Okay. And you could see in these photographs that  
21 you were given and many of them we've seen here through other  
22 witnesses that it didn't appear that any effort was made to  
23 get those scales at the bottom of any of the impressions that  
24 were sent to you for examination; correct?

25 A. Well, I can say that some of them are not at the

1 bottom, but I can't say whether or not that was due to a lack  
2 of effort. Some of the impressions could have also been on a  
3 different plane. When you leave a shoe print in the ground,  
4 the ground itself is not exactly even. It might be on  
5 multiple levels.

6 Q. And not every photograph you were sent for analysis  
7 had a scale in it at all; right?

8 A. That's correct.

9 Q. We saw some here that had a big flashlight on them?

10 A. Yes, that's true.

11 Q. That's not a forensic scale?

12 A. We don't recommend to use that as a scale.

13 Q. It's not a uniform standard of measurement two  
14 flashlights equals something? It's not a standard measure?

15 A. No, it's not.

16 Q. Okay. And other techniques that are important  
17 in -- in photographing shoe print evidence are related to  
18 location; right, where is that shoe print in relation to a  
19 lot of different things; right?

20 A. Yes.

21 Q. So one of the things is is this shoe print -- if  
22 you look at a photograph, is it connected to this case? That  
23 would be basic information; right?

24 A. That's correct.

25 Q. Okay. And there are a number of techniques



1 available for identification, something as simple as a  
2 evidence placard or an evidence tent with a number or a  
3 letter on it would be useful; right?

4 A. Yes, that would be useful.

5 Q. And something with the date and the case number in  
6 each photograph would be very useful in making sure that  
7 every one of those images was connected to the same case?

8 A. Yes, that's correct.

9 Q. Okay. And those techniques were not used uniformly  
10 in the 20 images that you used for your database search;  
11 isn't that right?

12 A. No, they weren't.

13 Q. Okay. So my understanding, Mr. Gilkerson, is as we  
14 sit here today on September 14<sup>th</sup>, 2010, you can't tell this  
15 jury that you know where those shoe prints were located?

16 A. No, I can't say specifically or geographically  
17 where they're located. I usually don't know that in any  
18 case.

19 Q. And you can't tell us that you know where those 20  
20 shoe prints were located in relation to each other, for  
21 example, were they 20 successive footfalls by the same  
22 person? You can't say that, can you?

23 A. No, I don't know exactly that.

24 Q. Okay. You can't tell us what direction those shoe  
25 prints were traveling in from those images, can you?

1 A. No.

2 Q. You can't tell us whether they were all made at the  
3 same time, can you?

4 A. No, I can't.

5 Q. You can't tell us that they were all made on the  
6 same day, can you?

7 A. No, I can't.

8 Q. You can't tell us how old those shoe prints are?

9 A. No, I can't tell you how old they are.

10 Q. You can't tell us from those photographs whether,  
11 for example, it had recently rained? You can't see in any of  
12 those shoe prints any evidence of recent rain, can you?

13 A. I can't tell when it rained. I don't know about  
14 the term recent, but I can't tell when it rained.

15 Q. Days? Hours? Weeks?

16 A. I don't know.

17 Q. Okay. And there's just nothing about those  
18 photographs that illuminates that fact for you; right?

19 A. That's correct.

20 Q. And in -- in the preservation and collection of  
21 shoe print evidence, we've talked primarily about the  
22 photographs of each impression because that's the work you  
23 do; right? But it is important, isn't it, for law  
24 enforcement purposes to document a track of shoe prints if  
25 that's what the evidence turns out to be? That's an

1 important technique; right?

2 A. I'm sorry. Can you repeat that question? I didn't  
3 hear all of it.

4 Q. It is important, isn't it, for local law  
5 enforcement to document an actual track of shoe prints if  
6 that's going to be part of their case? That's an important  
7 concept?

8 A. Yes. If you believe it's part of the crime scene,  
9 yes.

10 Q. Okay. And how in your experience can that be done  
11 photographically?

12 A. Well, you would assign each impression a number and  
13 you would want to ensure that that number is visible in each  
14 of the photographs.

15 Q. Every impression?

16 A. Yes.

17 Q. Do you think every impression of the tracks should  
18 be photographed?

19 A. It depends upon the crime scene and how large it is  
20 and how many different tracks are present and whether or not  
21 the tracks you believe are related to the crime versus  
22 emergency response people or even crime scene personnel.  
23 There's a lot of different things that go into evaluating  
24 that.

25 Q. Okay. If you're trying to make the claim as a law

1 enforcement officer or as a prosecutor that there is an  
2 identifiable track of shoe prints made by one person wearing  
3 one pair of shoes walking from one point to another point,  
4 that would be particularly important to document properly in  
5 your opinion; correct?

6 A. Yes. You would want to document that.

7 Q. Okay. And if you were going to argue that these  
8 shoe prints could be visible and they -- they began at a  
9 particular point and went to another place and back to  
10 another place, it might even be more important to photograph  
11 every suspected impression in that track; correct?

12 A. Yes, or you would at least want to document the  
13 direction of travel and indicate where the tracks go, where  
14 they lead, those sorts of things.

15 Q. Okay. You're not here today to provide us any  
16 information about any such track in this case; correct?

17 A. No. I simply was asked to determine what shoe  
18 could have made the impression and that was it.

19 Q. Okay. Subject to all the limitations you've just  
20 went through with us about the age of the impressions, the  
21 location of the impressions, none of those things you're here  
22 to speak to today, you can't tell us anything about the --  
23 the history of those impressions, how they came to be on the  
24 ground?

25 A. No, and they're not part of the normal database

1 search request.

2 Q. Okay. And you can't tell us anything about the  
3 size of the shoe that made those impressions; correct?

4 A. That's correct.

5 Q. Okay. Now, this was classified by you -- I think  
6 you used the phrase local law enforcement assist. That's  
7 what you were doing in this case; right?

8 A. Yes.

9 Q. Okay. This was not an FBI investigation connected  
10 to this case; correct?

11 A. That's correct, to my knowledge.

12 Q. Okay. And you -- you do that on a regular basis?  
13 Local law enforcement contacts the FBI for assistance and the  
14 project gets funneled to you and as you said, those cases get  
15 assigned to you and you do what you can to help local law  
16 enforcement?

17 A. Yes. Outside agencies do that or they -- they also  
18 submit the impressions directly to us as well. That occurs  
19 quite often.

20 Q. Okay. Without going through --

21 A. Without going through an FBI field office, yes.

22 Q. They just know how to reach the crime lab?

23 A. Yes, that's correct.

24 Q. If I told you in this case that Mr. Wong of the  
25 Arizona Department of Public Safety actually gave the Yavapai

1 County Sheriff's Office your contact information, would that  
2 come as a surprise to you?

3 A. No.

4 Q. Okay. You get that kind of referral all the time?

5 A. Yes.

6 Q. Your name and your contact information is out  
7 there?

8 A. Yes, it is.

9 Q. Okay. But you also work on FBI cases I imagine?

10 A. Yes, I do.

11 Q. Okay. Now, in this database search, my  
12 understanding of the methodology -- and actually this is  
13 really sort of interesting. In Mr. -- Agent Bodziak's book,  
14 he actually has a picture of a woman. I don't know if you  
15 know her or not.

16 A. Yes, I've worked with her. I know who she is.

17 Q. A picture of her -- is she doing a database search  
18 in this picture?

19 A. Yes, about 20 years ago.

20 Q. I was going to say. The computer looks like it  
21 might be -- I was going to ask you if the FBI is still using  
22 that computer?

23 A. No, that book was issued -- or published about 20  
24 years ago.

25 Q. Okay. But the idea is the same? You sit at a

1 computer, and from what you told us, after you have  
2 identified these shapes, you boot up the SICAR program and  
3 it's icon driven; is that right?

4 A. Yes, that's correct.

5 Q. Okay. Now, for those of us who are not terribly  
6 computer familiar, an icon is just an image; right?

7 A. Yes. It's -- for example, if there's a triangle on  
8 the bottom of a shoe, we would use the triangle as the icon.  
9 If there are little zigzag lines that we call herringbones,  
10 it might be a little zigzag line as the icon. Not every  
11 geometric shape has a icon, but the common ones do, yes.

12 Q. And so you click on the icons of the search and  
13 then you ask the -- the computer program to search its  
14 database of in the case of SICAR 20 to 25,000 images for what  
15 you call hits; is that right?

16 A. Yes.

17 Q. Okay. Now, you told us that what you do then is  
18 when you get the hits, you actually then manually -- you look  
19 through and you scroll through and look at these images while  
20 you're looking at the photographs that you were sent of the  
21 questioned impression to see if you find something in the  
22 database that could have made questioned impressions; is that  
23 right?

24 A. Yes, that's correct.

25 Q. Okay. And you said you found this one shoe, but it

1 wasn't in the SICAR database; is that right?

2 A. That's correct, it was not in SICAR.

3 Q. It happened to be in the FBI database; is that  
4 right?

5 A. Yes, that's correct.

6 Q. So this would be an example of where there's no  
7 overlap, where an outsole design is in one database, but not  
8 in both?

9 A. Yes, that's correct.

10 Q. Okay. And can you tell us as you sit here today  
11 what the next closest hit was to the one that -- that you  
12 landed on this La Sportiva Ultrarord?

13 A. I'm not sure I understand what you mean by next  
14 closest.

15 Q. Was there another --

16 A. In my mind, it either could have made the  
17 impression or couldn't.

18 Q. So you were able to --

19 A. I didn't evaluate them.

20 Q. You were able to exclude every other outsole design  
21 on the hit list but the La Sportiva Ultrarord?

22 A. Yes, that's correct.

23 Q. Okay. And you didn't save that -- that search?  
24 You didn't save the data that -- that came out on the hit  
25 list anywhere; right?



1 A. No, we don't save that.

2 Q. Okay. So you'd have to redo the search again;  
3 right --

4 A. Yes, that's correct.

5 Q. -- to replicate that? But the search might be  
6 updated since then? The database could be updated?

7 A. Well, no, it wouldn't be because we no longer add  
8 shoes to our old database.

9 Q. But you might find it now on SICAR? It might show  
10 up on SICAR?

11 A. If it's in their database now, yes.

12 Q. Okay. So then you have something on the computer  
13 and it would be photographs; right? You remember in this  
14 case it was photographs of the Ultranord that popped up on  
15 your computer at your office in Virginia?

16 A. Yes, it was a picture of the bottom of the shoe.

17 Q. Okay. And so you said, okay, that could have made  
18 it, and that turned out to be your ultimate conclusion;  
19 right?

20 A. Yes, that's correct.

21 Q. That that -- that any one of those three  
22 Ultranord -- I'm sorry -- La Sportiva shoes could have made  
23 the impressions in this group of 20 impressions because they  
24 shared common geometric designs; correct?

25 A. Yes, that's correct.

1 Q. Okay. But to be very clear here, you made no  
2 identification? You're not here today to say that to the  
3 exclusion of all other shoes, one of those three tread  
4 designs made each of those impressions; correct? You can't  
5 say that?

6 A. No, I can't say that there's another tread out  
7 there that's similar to that that could have made it, no.

8 Q. Okay.

9 A. I'm not -- I'm not identifying those impressions to  
10 that specific shoe if that's what you're asking.

11 Q. You said any number of times that your conclusion  
12 of the database search was that the -- the tread design on  
13 those three different La Sportiva models, any one of three  
14 because they're all the same; right?

15 A. Yes.

16 Q. Any one of those could have made the impressions in  
17 the ground at this crime scene; right?

18 A. Yes, that's correct.

19 Q. Okay. But you don't know how many total  
20 impressions were there; correct?

21 A. No, I don't know the exact number.

22 Q. So we're talking about 20 out of some much larger  
23 number perhaps; right?

24 A. Well, there were 20 images. There might be the  
25 same impression of all the images so I don't know the total

1 number of impressions. There's two different things between  
2 the total number of images and the total number of  
3 impressions.

4 Q. So of those 20, some number, three or four or five  
5 of them, might be photographs of the same impression in the  
6 ground.

7 A. Yes, that's possible.

8 Q. And the failure of local law enforcement to  
9 individually identify each of those impressions leaves you  
10 with that possibility then?

11 A. Well, I could also recognize that by other things  
12 that are on the ground perhaps.

13 Q. Okay.

14 A. A rock or a twig or something like that that would  
15 help me to figure out which is the same impression.

16 Q. Well, you shouldn't have to do that; right? I  
17 mean, if they just numbered each impression, that would be  
18 the end of that discussion; right?

19 A. It would make it easier, but it's -- it's not  
20 uncommon for me to have to do that.

21 Q. Okay. Did you bother to do that in this case to  
22 see whether you had 20 different impressions or some smaller  
23 number?

24 A. Yes, I did.

25 Q. And what's the number?

1       A.     I would have to look at my notes.

2       Q.     Go ahead.

3       A.     Of all of the impressions that I looked at, there  
4 were -- I count at least 14 in my notes.

5       Q.     Out of 20?

6       A.     No, out of every image that I looked at.

7       Q.     So there may be as few as 14 different impressions  
8 that are the subject of the 55 photographs?

9       A.     Yes.

10      Q.     Okay. Okay. Talking about the victim's shoes just  
11 for a minute here, Mr. Gilkerson. Can you tell me -- and if  
12 you need to review your reports, that's fine too. Can you  
13 tell me how many different images of questioned impressions  
14 you were sent when you were asked to do an identification  
15 using the victim's shoes? How many different new images were  
16 you sent?

17      A.     Can I look at my notes?

18      Q.     Please.

19      A.     My report? There were one, two, three -- there  
20 were five images that I was sent.

21      Q.     Okay. And three were deemed to have sufficient  
22 detail and two were not; correct?

23      A.     That's correct.

24      Q.     And the two that were not were rejected because  
25 primarily the forensic photography was lacking in some

1 respect to allow you to make any meaningful comparison;  
2 correct? That's what your report says?

3 A. It says they lack sufficient detail that that could  
4 be because it was not a very good impression to begin with or  
5 it could be because the photographs are not photographed very  
6 well, the impressions were not photographed properly. It  
7 could be one of two reasons.

8 MR. SEARS: Okay. Thank you. I have no other  
9 questions, your Honor.

10 THE COURT: Thank you, Mr. Sears.

11 Mr. Butner, redirect?  
12

13 R E D I R E C T E X A M I N A T I O N

14 BY MR. BUTNER:

15 Q. Well, we spent -- Mr. Sears spent a lot of time  
16 talking to you about the quality of the photographs that you  
17 were provided. You receive photographs from all over the  
18 country concerning impressions; is that correct?

19 A. Yes, that's correct.

20 Q. Okay. And the photographs that you received in  
21 this particular case, how did they compare with the  
22 photographs that you received from other agencies?

23 MR. SEARS: Relevance. This is not a contest,  
24 your Honor.

25 THE COURT: Overruled. You may answer that.

1 THE WITNESS: They are not the best detailed  
2 impressions I've seen, but they're not the worst that I've  
3 seen either.

4 BY MR. BUTNER:

5 Q. On average, are they above average, below, or about  
6 average?

7 MR. SEARS: Relevance.

8 THE COURT: Overruled.

9 THE WITNESS: Although there were sufficient  
10 detail, they were about average.

11 BY MR. BUTNER:

12 Q. And in terms of the casting process, you described  
13 how -- how that takes place. You indicate that -- that  
14 sometimes that's an option that -- that is exercised by law  
15 enforcement; is that correct?

16 A. Yes. We recommend that impressions in soil or snow  
17 are cast.

18 Q. And why do you recommend that impressions that are  
19 in snow or soil are cast?

20 A. Well, the casting backs up the photography. Excuse  
21 me. If for some reason the photographs did not turn out or  
22 the lighting wasn't proper, that may have been captured in a  
23 cast. Also when you step into the ground like sand or soil,  
24 the surface may be uneven and that's difficult to -- to  
25 photograph if an impression is on two different levels. And

1 that uneven surface can be captured in a cast, and for that  
2 reason, we recommend that impressions in soil be cast as well  
3 as photographed.

4 Q. And do you get castings in the large percentage of  
5 your cases?

6 A. When we have comparisons to direct shoes, we get a  
7 lot of casts in. For database searches, no, we don't get a  
8 lot of casts in. Primarily they're sent by e-mail. They're  
9 images that are sent to us.

10 Q. And when you say comparisons for direct shoes, is  
11 that what you said?

12 A. When you have a suspect shoe and you want to  
13 compare it to the crime scene impressions, at that point many  
14 times the agency will submit casts as well. But for the  
15 initial database search to provide them with investigative  
16 information, a lot of them do not submit casts.

17 Q. Would it be fair to state that the majority don't  
18 submit casts when you do a database search?

19 A. Yes, that's correct.

20 Q. Okay. But if you actually have a suspect shoe,  
21 then you get a cast usually?

22 A. Yes.

23 Q. Okay. In this particular case, you didn't have a  
24 suspect shoe; right?

25 A. That's correct.

1 Q. This was -- this started out as a database search;  
2 right?

3 A. It did, yes.

4 Q. And you never really actually got a, quote, suspect  
5 shoe, meaning a shoe from the suspect; right?

6 A. That's correct.

7 Q. You got shoes from the manufacturer; right?

8 A. Yes, that's correct.

9 Q. Okay. Did you use those shoes from the  
10 manufacturer?

11 A. Yes, I did.

12 Q. And how did you use those shoes?

13 A. I compared the sole design on the bottom of the  
14 shoe to the pattern of the impressions that were recovered  
15 from the crime scene.

16 Q. And when you compared the sole design from the  
17 manufacturer, what was your conclusion?

18 MR. SEARS: Asked and answered. Beyond the  
19 scope of cross.

20 THE COURT: Overruled. You may answer that.

21 THE WITNESS: As I said earlier, the  
22 La Sportiva Ultranord, Imogene, or Pikes Peak, either three  
23 of those shoes could have made the impressions in the 20 some  
24 photographs or images that I refer to in my lab report.

25 (Next page, please.)



1 BY MR. BUTNER:

2 Q. And you were asked questions about whether you had  
3 received information related to the location where the shoe  
4 prints were found. Do you remember that?

5 A. Yes.

6 Q. Okay. And when you're doing a database search  
7 looking for a shoe, do you usually get that kind of  
8 information from the law enforcement agency who investigated  
9 the scene?

10 A. No. They usually submit them as having been  
11 recovered from their crime scene.

12 Q. And for what reason do you not get the information  
13 related to the location?

14 A. Well, I don't need to know where the impression was  
15 made in order to do the database search.

16 Q. It's really not needed for your research; right?

17 A. Well, it's not needed for me to do the part of the  
18 analysis where -- from what I was requested to do.

19 Q. You're not offering any opinions in regard to the  
20 location where this crime occurred, are you?

21 A. No.

22 Q. And you never were asked to do that, were you?

23 A. No, I wasn't.

24 Q. Were you aware -- you were asked some information  
25 about knockoffs concerning shoe impressions. Do you recall

1 that?

2 A. Yes, I do.

3 Q. And do you know what a knockoff is or knocking off  
4 from a competitor?

5 A. Yes, I am.

6 Q. What's your -- what's your understanding of that?

7 A. It's a shoe that's made to look like a competitor's  
8 shoe. It can be done either legally or illegally.

9 Q. And sometimes in your databases, do you have actual  
10 knockoff impressions in the databases also?

11 A. No. To my knowledge, there aren't any.

12 Q. Okay. And in regard to the La Sportiva shoes,  
13 who -- would it be a good idea to consult the manufacturer to  
14 see if they had any knowledge about somebody knocking off  
15 their designs on their shoes?

16 A. Yeah. We -- you could ask them that. They would  
17 probably have better information about knockoffs of their  
18 shoes.

19 Q. And why would they have better information about  
20 knockoffs of their shoes?

21 A. Well, many of those companies would police that or  
22 look at that. That may affect their business and their  
23 sales. That doesn't impact me in terms of looking at  
24 impressions at a crime lab.

25 Q. Were you ever provided any information that

1 somebody was knocking off the sole patterns on the  
2 La Sportiva shoes?

3 A. No.

4 Q. Now, in terms of the number of La Sportiva shoes  
5 made with this type of sole pattern, we've heard testimony  
6 that there were approximately 8600 men's and there may be as  
7 many as a third more -- a third of that number that were  
8 women's shoe soles that were of a similar nature, that is,  
9 the same bottom pattern. Do you understand what I'm talking  
10 about?

11 A. Yes.

12 MR. SEARS: Beyond the scope of cross, your  
13 Honor.

14 THE COURT: Mr. Butner?

15 MR. BUTNER: I don't think it is, Judge.

16 THE COURT: What's the topic here you're  
17 asking him?

18 MR. BUTNER: In terms of the numbers as  
19 compared with whether there would be any more that were  
20 knockoffs.

21 THE COURT: Overruled. He may answer that if  
22 he can.

23 BY MR. BUTNER:

24 Q. Okay. So in terms of actual numbers of shoe sole  
25 impressions of about 10,000, were you aware that there were

1 any more shoe soles made of that number for knockoffs?

2 A. I'm not aware of a knockoff specifically for the  
3 La Sportiva shoes that I looked at in this case.

4 Q. And is 10,000 a relatively small number of shoe  
5 soles to be out there for one type of shoe manufacturer?

6 MR. SEARS: Relevance. Foundation.

7 THE COURT: Sustained.

8 BY MR. BUTNER:

9 Q. In terms of all of the photographs that you looked  
10 at, you indicated that some of them provided partial  
11 impressions; right?

12 A. Yes, that's correct.

13 Q. Were those partial impressions of value in doing  
14 your research?

15 A. Some of them were, yes.

16 Q. Okay. And in terms of all of the other  
17 impressions, did you have impressions that provided you a  
18 complete sole impression of the La Sportiva type of shoe  
19 sole?

20 A. I don't recall a specific impression that had good  
21 detail from head to toe. They were primarily partial  
22 impressions where some of the sole design would have printed,  
23 but not all of it.

24 Q. When we were looking at, for example, image --  
25 image 5509, Exhibit 2501 admitted into evidence, when we were

1 looking at this particular shoe impression, did that have  
2 both heel markings as well as what you referred to I think as  
3 toe markings?

4 MR. SEARS: Beyond the scope, your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: It had geometric shapes that are  
7 in the toe and the heel, yes.

8 BY MR. BUTNER:

9 Q. Okay. And when you say an entire shoe impression  
10 and you didn't see one that had the entire impression, what  
11 are you talking about?

12 A. In other words, there was not an impression that I  
13 recall seeing where you could see every geometric shape on  
14 the bottom of the shoe that printed and the impressions from  
15 the crime scene.

16 Q. Is it relatively rare for you to receive an  
17 impression like that where it has a complete flat sole  
18 impression for you to compare?

19 MR. SEARS: Foundation. Relevance. This case  
20 and this case only, your Honor.

21 THE COURT: Sustained.

22 BY MR. BUTNER:

23 Q. You had both toe and heel present in this  
24 particular image though; is that correct?

25 A. Yes. There are geometric shapes in the heel and

1 the toe on that particular impression.

2 Q. And so was it your belief that you had sufficient  
3 data to render a valid opinion within your field of  
4 expertise?

5 A. Yes. It's my opinion based on the 20 images that  
6 I've referred to earlier.

7 MR. BUTNER: I don't have any further  
8 questions of this witness at this time, Judge.

9 THE COURT: Thank you.

10 Are there questions from the jury? I think  
11 there are some. Let's see how many do we have to determine  
12 if we need to recess to make the record? Do we have all the  
13 questions?

14 THE BAILIFF: Yes, sir.

15 THE COURT: I would like to see the lawyers at  
16 sidebar, not on the record at this point anyway. Thank you.

17 (Sidebar discussion off the record.)

18 THE COURT: Mr. Gilkerson, I'll ask the jury  
19 questions. Lawyers can follow up if they wish.

20 THE WITNESS: Sure.

21

22 "Q U E S T I O N S B Y T H E J U R Y"

23 THE COURT: And the first just really has to  
24 do with an exhibit. There may be some foul-up on it.

25 Exhibit 740, the jury would like -- some of the jurors would

1 like to see Exhibit 740. I think, Mr. Sears, you -- that's  
2 the -- that's the photograph of the demonstrative exhibit.  
3 Whoever has that. We had it.

4 MR. SEARS: We don't have it, your Honor.

5 THE COURT: Okay. 704 might be right there.  
6 If I could see it -- yeah, that's the exhibit. I just want  
7 to verify the number.

8 THE BAILIFF: That's correct.

9 THE COURT: I can see that it is. If you'd  
10 hand that to the jury. They asked to take a look at that.

11 (Brief pause. Jury reviewing exhibit.)

12 THE COURT: And then this question. Could you  
13 tell if the 20 photos of the shoe impressions were from a  
14 men's or women's shoe?

15 THE WITNESS: No, not specifically looking at  
16 the design. No, not necessarily.

17 THE COURT: Okay. Then if the lawyers wish to  
18 follow up. Mr. Butner.

19

20 "F O L L O W - U P Q U E S T I O N S"

21 BY MR. BUTNER:

22 Q. And in terms of the size of the shoe, you didn't  
23 make any comparisons to determine size; is that correct?

24 A. That's correct.

25 MR. BUTNER: Okay. No further questions,

1 Judge.

2 THE COURT: Mr. Sears.

3 MR. SEARS: No questions, your Honor.

4 THE COURT: Then may Mr. Gilkerson be excused  
5 as a witness?

6 MR. BUTNER: He may.

7 MR. SEARS: Yes, your Honor.

8 THE COURT: Mr. Gilkerson, you will be excused  
9 as a witness. As I indicated, the rule of exclusion of  
10 witnesses applies in this case. This means that you cannot  
11 communicate in any way with other witnesses about your  
12 testimony or about any other aspect of this case until all  
13 witnesses have testified. It is best that you not discuss  
14 this case with anyone until the trial is completed. However,  
15 you may talk to the attorneys about the case as long as no  
16 other witnesses are present. And I think you understand  
17 that.

18 THE WITNESS: Yes, I do. Thank you, your  
19 Honor.

20 THE COURT: Again, you're welcome. Please  
21 watch your step, and you are excused at this time.

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome.

24 Ladies and gentlemen, we think there will be  
25 another witness this afternoon. We will take a brief recess,



1 and we're going to -- the parties will check into that. So  
2 remember the admonition and you know you can only have  
3 90-minute sessions, so -- in any event, so we would have had  
4 to take a break. Please be ready to resume by 10 after, and  
5 we'll touch base then. We'll go ahead and take that recess.

6 I'm going to ask the parties to remain just to  
7 put a couple matters on record. Thank you.

8 (Brief pause.)

9 ----oOo----

10 (Proceedings were held and reported, but are  
11 not contained herein.)

12 ----oOo----

13 (Recess from 3:59 p.m. to 4:11 p.m.)

14 THE COURT: Please be seated. Thank you.

15 The record will show the presence of the  
16 defendant, all of the attorneys, and the jury.

17 Mr. Butner, you may call your next witness.

18 MR. BUTNER: Judge, I call Adam Parent to the  
19 stand, please.

20 THE COURT: Okay. Sir, if you would please  
21 face the clerk and be sworn. Raise your right hand.

22

23 ADAM PARENT,

24 called as a witness herein, having been first duly sworn, was  
25 examined and testified as follows:

1 THE COURT: Please be seated here at the  
2 witness stand.

3 And, sir, would you please begin by stating  
4 and spelling your full name.

5 THE WITNESS: Adam Parent. A-D-A-M.  
6 P-A-R-E-N-T.

7 THE COURT: Thank you.  
8 Mr. Butner.

9 MR. BUTNER: Thanks, Judge.

10

11 D I R E C T E X A M I N A T I O N

12 BY MR. BUTNER:

13 Q. Thank you, Mr. Parent, for coming down here on a  
14 short notice.

15 A. Sure.

16 Q. I appreciate it very much.

17 Sir, what is your present occupation?

18 A. I'm a chef.

19 Q. Prior to working as a chef, were you employed at  
20 the Hassayampa Country Club?

21 A. Yes, sir.

22 Q. And what was your occupation there at the  
23 Hassayampa?

24 A. Facility superintendent.

25 Q. And when you worked as a facility superintendent,

1 did you have duties in connection with the Headwaters Fitness  
2 Center?

3 A. Yes, sir.

4 Q. What were your duties in connection with the  
5 Headwaters Fitness Center?

6 A. All janitorial, maintenance, and keeping the logs.

7 Q. So you were a records custodian for the sign-in  
8 logs at the Headwaters Fitness Center?

9 A. Yes, sir.

10 Q. Were there any kind of requirement that people sign  
11 in in order to use the fitness center?

12 A. There was a sign posted asking that everyone sign  
13 in.

14 Q. Asking them to sign in?

15 MR. SEARS: Your Honor, I'm not hearing  
16 Mr. Parent.

17 THE COURT: Mr. Parent, if you could move that  
18 whole microphone stand, I think they might be able to hear  
19 you a little bit more.

20 THE WITNESS: Is that better?

21 MR. BUTNER: That is better. Thank you.

22 BY MR. BUTNER:

23 Q. So if what I understand you said, there was a sign  
24 posted asking people to sign in?

25 A. Yes.

1 Q. It wasn't absolutely mandatory?

2 A. No.

3 Q. And it wasn't enforced in some fashion?

4 A. No.

5 Q. Okay. And just to clarify, you indicated that you  
6 had custody of the records for the fitness center, the  
7 sign-in logs?

8 A. Yes, sir.

9 Q. Were you working and performing those duties back  
10 in July of 2008?

11 A. Yes.

12 Q. Actually, in June and July of 2008?

13 A. Yes.

14 Q. And in performing those duties, did you actually  
15 stay at the fitness center and check to see if people were  
16 signing in or out?

17 A. Generally I'd swing by in the morning rounds 6:30,  
18 7:00 o'clock, go again around 11:00, 11:30, and then again at  
19 3:00 -- anywhere from 3:00 to 4:30.

20 Q. And when you did that, when you checked there, did  
21 you pick up the fitness logs and put new ones out in case  
22 they were filled up with signatures?

23 A. Usually I do it by the month. I did 30 sheets at a  
24 time.

25 Q. I see. Okay. So would you group these -- these

1 sign-in sheets then basically by the month?

2 A. Yes.

3 Q. Okay. I'm going to show you what's been marked as  
4 Exhibit 208. I've already shown this to counsel. Do you  
5 recognize that particular exhibit?

6 A. Yes, sir.

7 Q. Would you take a look at it and thumb through the  
8 pages.

9 A. Yeah.

10 Q. Is that the sign-in logs for the period of time of  
11 June and part of July of the year 2008?

12 A. Yeah.

13 Q. Did you say yes?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. And those are the sign-in logs at the Headwaters  
18 Fitness Center?

19 A. Yes.

20 Q. And the Headwaters Fitness Center, that's also  
21 commonly referred to as the Hassayampa Fitness Center?

22 A. Yes.

23 Q. And you kept those logs in the ordinary course of  
24 your business duties working there at the Hassayampa?

25 A. Yes.

1 MR. BUTNER: I would move for the admission of  
2 Exhibit 208 at this time.

3 MS. CHAPMAN: Couple questions, your Honor, on  
4 voir dire, your Honor.

5 THE COURT: Okay.

6

7 V O I R D I R E E X A M I N A T I O N

8 BY MS. CHAPMAN:

9 Q. Mr. Parent, not all of these have dates at the top  
10 of them. Who was responsible for putting the date in where  
11 it indicates today's date?

12 A. Generally, the first person in would fill in the  
13 date.

14 Q. The first person working out at the gym that day?

15 A. Yes.

16 Q. So that's not something that you did?

17 A. No.

18 Q. Okay. And if there's not a log for a particular  
19 day, I notice there are some days missing, would you tell me  
20 would that mean no one was at the gym that day or no one put  
21 a date on it or why would that be?

22 A. More than likely no one was there or they got lost  
23 in the mix.

24 Q. Okay. So this doesn't necessarily reflect every  
25 log from every day because some might have been lost in the

1 mix?

2 A. Yes.

3 Q. I'm sorry?

4 A. Yes.

5 Q. Some might have been lost in the mix?

6 A. (No audible response.)

7 MS. CHAPMAN: With those understandings, your  
8 Honor, I have no objection.

9 THE COURT: 208 is admitted.

10

11 D I R E C T E X A M I N A T I O N (Continued)

12 BY MR. BUTNER:

13 Q. And referring to 208 on the top, there is a sign-in  
14 sheet indicating 7/2 of 208; right?

15 A. Uh-huh.

16 Q. 2008; right?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes. Yes.

20 Q. Okay.

21 A. I'm sorry.

22 Q. This lady right in front of you is taking every  
23 word down.

24 A. It's hard to write, uh-huh.

25 Q. Yeah. Uh-huh doesn't show up too well on paper.

1                   Okay. So the answer was yes; right?

2           A.     Yes.

3           Q.     And if you flip through there, is there another  
4 sign-in sheet for 7/2 of 2008 also?

5           A.     Yeah, there's two.

6           Q.     Okay. And one has a pool -- has pool written up at  
7 the top; right?

8           A.     One's from outside. They kept one at the pool and  
9 one inside.

10          Q.     That was going to be my question.

11          A.     Yes.

12          Q.     So actually sometimes there were two logs --

13          A.     There is probably two merged logs.

14          Q.     Pardon?

15          A.     These are two logs. I don't know if they're mixed  
16 together or not --

17          Q.     Okay.

18          A.     -- but it's definitely from the two.

19          Q.     Okay. And looking at the ones for July 2<sup>nd</sup> of  
20 2008, did you see any sign-ins by anybody from the DeMocker  
21 family for either of those logs on July 2<sup>nd</sup> of 2008?

22          A.     No.

23                   MR. BUTNER: Okay. I don't have any further  
24 questions of this witness at this time. Thank you, sir.

25                   THE COURT: Thank you.



1 Ms. Chapman.

2

3 C R O S S - E X A M I N A T I O N

4 BY MS. CHAPMAN:

5 Q. Good afternoon, Mr. Parent.

6 A. Hi.

7 Q. I just have I think two quick questions. You said  
8 that there's a sign asking guests to sign in; is that right?

9 A. Yes.

10 Q. And some guests do sign?

11 A. Yes.

12 Q. And some don't?

13 A. Correct.

14 Q. So the absence of a name on this log doesn't tell  
15 you who was or wasn't at the gym on a particular date?

16 A. No.

17 MS. CHAPMAN: Thank you. No further  
18 questions.

19 THE COURT: Anything further, Mr. Butner?

20 MR. BUTNER: No redirect, Judge. Thank you.

21 THE COURT: Any questions from the jury? I  
22 don't see any hands.

23 And may Mr. Parent be excused as a witness?

24 MR. BUTNER: He may, your Honor.

25 THE COURT: Ms. Chapman?

1 MS. CHAPMAN: Yes, your Honor.

2 THE COURT: You will be excused as a witness,  
3 Mr. Parent. The rule of exclusion of witnesses applies in  
4 this case. This means that you cannot communicate in any way  
5 with other witnesses about your testimony or about any other  
6 aspect of this case until all witnesses have testified. It  
7 is best that you not discuss this case with anyone until the  
8 trial is completed. However, you may talk to the attorneys  
9 about the case as long as no other witnesses are present. Do  
10 you understand?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Thank you. Please watch  
13 your step. You are excused.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Butner?

16 MR. BUTNER: Judge, I don't have any further  
17 witnesses at this time. That doesn't mean I won't have any  
18 tomorrow, just this evening.

19 THE COURT: Thank you, Mr. Butner.

20 Ladies and gentlemen, we will take the evening  
21 recess then. Please remember the admonition, all aspects of  
22 the admonition that we have discussed on various occasions  
23 throughout the case. Please be back in the jury room by  
24 9:00 a.m., and we'll get started as soon as we can after  
25 that.

1                   And I want to make sure the lawyers see my  
2 bailiff before you leave about a possible legal issue to  
3 discuss.

4                   Thank you. We're in recess.

5                   (Recess from 4:22 p.m. to 4:32 p.m.)

6                   ---oOo---

7                   (Proceedings were held and reported, but are  
8 not contained herein.)

9                   ---oOo---

10                  (Proceedings concluded at 4:49 p.m.)

11                  ---oOo---

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REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Acting Official Reporter of Yavapai County Superior Court, Kathy Johnston, Certified Reporter No. 50164, Division Six, at the time and place as set forth.

Dated at Prescott, Arizona, this 30<sup>th</sup> day of June, 2011.

  
KATHY JOHNSTON  
Certified Reporter No. 50164  
Registered Professional Reporter

FILED ON \_\_\_\_\_